



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor

Suzanne Lee Chan, Vice Mayor

Anu Natarajan

Bill Harrison

Dominic Dutra

City Staff

Fred Diaz, City Manager

Harvey E. Levine, City Attorney

Mark Danaj, Assistant City Manager

Harriet Commons, Finance Director

Marilyn Crane, Information Technology Svcs. Dir.

Susan Gauthier, Acting City Clerk

Annabell Holland, Community Services Director

Norm Hughes, City Engineer

Bruce Martin, Fire Chief

Jim Pierson, Public Works Director

Jeff Schwob, Interim Community Dev. Director

Suzanne Shenfil, Human Services Director

Craig Steckler, Chief of Police

Brian Stott, Human Resources Director

Lori Taylor, Economic Development Director

Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

NOTICE AND AGENDA OF SPECIAL MEETING CLOSED SESSION

DATE: Tuesday, July 26, 2011

TIME: 5:30 p.m.

LOCATION: Fremont Room, 3300 Capitol Avenue, Fremont-

TELECONFERENCE NOTICE

*Pursuant to Government Code Section 54953, Subdivision (b), the following Council meeting will include teleconference participation by Councilmember Natarajan from:
303 Salarpuria Aristocracy, 14th Cross Road, J.P. Nagar 1st Phase, Bangalore 560078, India.*

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT:

Any person desiring to speak on an item listed on this Notice, may do so now. The Mayor will limit the length of your presentation and each speaker may only speak once on each item.

- 1) CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director and Harvey Levine, City Attorney as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Association of Management Employees
Fremont Association of City Employees
Operating Engineers
Teamsters Local 856
Fremont Police Association
Professional Engineers and Technicians Association

- 2) **CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director and Harvey Levine, City Attorney as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Fire Fighters
Fremont Fire Fighters Battalion Chiefs

This Special Meeting is being called by Mayor Wasserman.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
JULY 26, 2011
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

TELECONFERENCE NOTICE

*Pursuant to Government Code Section 54953, Subdivision (b), the following Council meeting will include teleconference participation by Councilmember Natarajan from:
303 Salarpuria Aristocracy, 14th Cross Road, J.P. Nagar 1st Phase, Bangalore 560078, India.*

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – None*
- 2.3 *FINAL MAP FOR TRACT 7986 AND IMPROVEMENT AGREEMENTS – 3651
WALNUT AVENUE, UH DOWNTOWN FREMONT, LLC
Approval of Final Map for Tract 7986, Improvement Agreements for Construction of
Public Streets (Walnut Avenue, California Street and Beacon Avenue), Private
Improvements (Common Areas and State Street Plaza) and Dedication of Land and
Public Easements for Tract 7986*

Contact Person:

<i>Name:</i>	<i>Dilip Kishnani</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4736</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>dkishnani@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATION: Adopt a resolution:

- 1. Approving the Final Map for Tract 7986.*
- 2. Approving the Agreement for Public Improvements entitled "Public Improvement Agreement, Tract 7986", with the developer, UH Downtown Fremont LLC., a Delaware limited liability company, and authorizing the City Manager or his designee to execute the agreement on behalf of the City.*
- 3. Approving the Agreement for Private Improvements entitled "Private Improvement Agreement, Tract 7986", with the developer, UH Downtown Fremont LLC., a Delaware limited liability company, and authorizing the City Manager or his designee to execute the agreement on behalf of the City.*
- 4. Accepting the developer's offer of dedication of easements, as identified on the Final Map, provided that the acceptance of the offer of dedication of easements for public roadway purposes shall be conditioned upon the developer's completion of improvements to the satisfaction of the City Engineer.*

2.4 PURCHASE OF BACKUP AND RECOVERY HARDWARE AND SOFTWARE

Authorize the City Manager or Designee to Issue a Purchase Order to Dell Marketing L.P. for EMC Data Domain Backup and Recovery Hardware and EMC NetWorker Software

Contact Person:

<i>Name:</i>	<i>Marilyn J. Crane</i>
<i>Title:</i>	<i>Director</i>
<i>Dept.:</i>	<i>Information Technology Services</i>
<i>Phone:</i>	<i>510-494-4802</i>
<i>E-Mail:</i>	<i>mcrane@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or his designee to issue a purchase order to Dell Marketing L.P., for the purchase of the EMC Data Domain DD670 backup and recovery hardware and the EMC NetWorker software in an amount not-to-exceed \$215,653.

2.5 2011 BRIDGE PREVENTATIVE MAINTENANCE PROJECT CONTRACT AWARD

Approval of Plans and Specifications and Award of Contract to the Lowest Responsible and Responsive Bidder for the 2011 Citywide Bridge Preventative Maintenance Project, City Project No. 8120-B (PWC), Federal Project No. BPMP-5322(045)

Contact Person:

<i>Name:</i>	<i>Ed Nakayama</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Engineer II (Civil)</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4775</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>enakayama@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATION: Approve the plans and specifications, accept the bid and award the construction contract for the Citywide Bridge Preventative Maintenance Project, City Project No. 8120-B (PWC) to the lowest responsible bidder, Victory Engineers, Inc., in the amount of \$186,186.00 and authorize the City Manager or his designee to execute the contract.

2.6 ACCEPTANCE OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS

Accept the Highway Safety Improvement Program (HSIP) Grant and Appropriate the Grant Funds of \$517,680 to the Walnut Avenue-Argonaut Way/Parkhurst Drive Lane Reduction and Roundabout Project, City Project No. 8669(PWC)

Contact Person:

<i>Name:</i>	<i>Rene Dalton</i>	<i>Kunle Odumade</i>
<i>Title:</i>	<i>Associate Transportation Engineer</i>	<i>Transportation Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4535</i>	<i>510-494-4746</i>
<i>E-Mail:</i>	<i>rdalton@fremont.gov</i>	<i>kodumade@fremont.gov</i>

RECOMMENDATION:

- 1. Authorize the City Manager or designee to accept the HSIP grant and to execute any associated grant documents.*
- 2. Appropriate funds in the grant amount of \$517,680 to 522PWC8669, Walnut Avenue-Argonaut Way/Parkhurst Drive Roundabout and Lane Reduction Project.*
- 3. Transfer \$10,520 from 509PWC8541, Measure B Bike/Pedestrian Funds to 509PWC8669, Walnut Avenue-Argonaut Way/Parkhurst Drive Roundabout and Lane Reduction Project.*

2.7 HEARING OFFICER SERVICES CONTRACT WITH DATA TICKET, INC.

Request for Approval of Contract with Data Ticket, Inc., for the Purpose of Providing Parking Citation and Administrative Remedy Ordinance Hearing Officer Services

Contact Person:

<i>Name:</i>	<i>Geneva Bosques</i>	<i>Mark Riggs</i>
<i>Title:</i>	<i>Management Analyst II</i>	<i>Lieutenant</i>
<i>Dept.:</i>	<i>Police</i>	<i>Police</i>
<i>Phone:</i>	<i>510-790-6957</i>	<i>510-790-6913</i>
<i>E-Mail:</i>	<i>gbosques@fremont.gov</i>	<i>mriggs@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or designee to execute an agreement with Data Ticket, Inc., to provide Hearing Officer Services for parking and Administrative Remedy Ordinance citations for a term of five years.

2.8 CITATION PROCESSING AND COLLECTIONS CONTRACT

Request for Approval of Contract with Data Ticket, Inc., for the Purpose of Providing Parking Citation and Administrative Remedy Ordinance Processing and Collection Services

Contact Person:

<i>Name:</i>	<i>Geneva Bosques</i>	<i>Mark Riggs</i>
<i>Title:</i>	<i>Management Analyst II</i>	<i>Lieutenant</i>
<i>Dept.:</i>	<i>Police</i>	<i>Police</i>
<i>Phone:</i>	<i>510-790-6957</i>	<i>510-790-6913</i>
<i>E-Mail:</i>	<i>gbosques@fremont.gov</i>	<i>mriggs@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or designee to execute an agreement with Data Ticket, Inc., for the processing and collections of parking and administrative citations for a term of five years.

2.9 APPROVAL OF PLANS AND SPECIFICATIONS AND AWARD OF CONTRACT FOR THE POLICE BUILDING AND MAIN LIBRARY BOILER REPLACEMENTS

Approval of Plans and Specifications, and Award of Contract to the Lowest Responsive Responsible Bidder for the Police Building and Main Library Boiler Replacements (City Project No. PWC 8684)

Contact Person:

<i>Name:</i>	<i>Martha S. Martinez</i>	<i>Robert Kalkbrenner</i>
<i>Title:</i>	<i>Project Manager</i>	<i>Civic Facilities Development Manager</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4727</i>	<i>510-494-4428</i>
<i>E-Mail:</i>	<i>mamartinez@fremont.gov</i>	<i>rkalkbrenner@fremont.gov</i>

RECOMMENDATION:

- 1. Approve the plans and specifications for the Police Building and Main Library Boiler Replacements, City Project No. 8684 (PWC).*
- 2. Award a contract for the Police Building and Main Library Boiler Replacements, City Project No. 8684 (PWC), to Bay City Boiler & Engineering Co., Inc., in the amount of \$190,750; and authorize the City Manager, or designee, to execute the contract.*

2.10 ENGINEER SELECTION AND CONTRACT AWARD FOR DESIGNING DEVELOPMENT CENTER SEISMIC UPGRADE PROJECT

Authorization of City Manager to Execute a Contract with Biggs Cardosa Associates, Inc., in an Amount of \$124,126 for Comprehensive Design Engineering Services for Development Center Seismic Upgrade, HVAC Replacement, and Exterior Wall Repair (City Project No. PWC 8752)

Contact Person:

<i>Name:</i>	<i>Michael Ma</i>	<i>Robert Kalkbrenner</i>
<i>Title:</i>	<i>Project Manager</i>	<i>Civic Facilities Development Manager</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4750</i>	<i>510-494-4428</i>
<i>E-Mail:</i>	<i>mma@fremont.gov</i>	<i>rkalkbrenner@fremont.gov</i>

RECOMMENDATION: Authorize City Manager to execute a contract with Biggs Cardosa Associates for design engineering services in an amount not to exceed \$124,126.

2.11 SETTING THE GENERAL OBLIGATION BOND 2011/12 TAX RATE

Setting the Annual Tax Rate for Voter-Approved General Obligation Bond Debt Service for Fiscal Year 2011/12

Contact Person:

<i>Name:</i>	<i>Harriet Commons</i>
<i>Title:</i>	<i>Director</i>
<i>Dept.:</i>	<i>Finance</i>
<i>Phone:</i>	<i>510-284-4010</i>
<i>E-Mail:</i>	<i>hcommons@fremont.gov</i>

RECOMMENDATION:

- 1. Establish the Fire Safety General Obligation Bonds tax rate of \$0.00983 per \$100 of assessed valuation (0.00983%) for fiscal year 2011/12.*
- 2. Adopt a resolution requesting and authorizing the County of Alameda to levy a tax on all taxable properties in the City as a voter-approved levy with respect to the Fire Safety Project GO Bonds.*

2.12 ADOPTION OF CFD NO. 1 POLICY AND ADMINISTRATIVE PROCEDURE

Adoption of a Resolution of the City Council of the City of Fremont Adopting the City's Policy and Administrative Procedure for Appeals and Interpretations Pursuant to Section F of the Second Revised Rate and Method of Apportionment of Special Tax for City of Fremont Community Facilities District No. 1 (Pacific Commons) and Appointing an Appeals Board

Contact Person:

<i>Name:</i>	<i>Nellie Ancel</i>	<i>Harvey Levine</i>
<i>Title:</i>	<i>Senior Deputy Attorney II</i>	<i>City Attorney</i>
<i>Dept.:</i>	<i>City Attorney</i>	<i>City Attorney</i>
<i>Phone:</i>	<i>510-284-4030</i>	<i>510-284-4030</i>
<i>E-Mail:</i>	<i>nancel@fremont.gov</i>	<i>hlevine@fremont.gov</i>

RECOMMENDATION: Adopt a Resolution adopting the City's policy and administrative procedure for appeals and interpretations pursuant to Section F of the second revised Rate and Method of Apportionment of special tax for City of Fremont Community Facilities District No. 1 (Pacific Commons) and appointing an appeals board.

2.13 ACCEPTANCE OF FY 2011/12 FEDERAL HOME FUNDING

Adopt a Resolution Accepting FY 2011/12 Federal Home Investment Partnership Act Funds and Authorizing the City Manager to Execute an Agreement with Alameda County

Contact Person:

<i>Name:</i>	<i>May Lee</i>	<i>Elisa Tierney</i>
<i>Title:</i>	<i>Housing Program Manager</i>	<i>Redevelopment Agency Director</i>
<i>Dept.:</i>	<i>Office of Housing & Redevelopment</i>	<i>Office of Housing & Redevelopment</i>
<i>Phone:</i>	<i>510-494-4506</i>	<i>510-494-4501</i>
<i>E-Mail:</i>	<i>mlee@fremont.gov</i>	<i>etierney@fremont.gov</i>

RECOMMENDATION: Adopt a resolution authorizing the City Manager or his designee to execute a FY 2011/12 HOME sub-recipient agreement with Alameda County, and accept \$521,809 in FY 2011/12 Federal HOME Investment Partnership Act Funds.

2.14 PROPOSAL FOR RESTATED FLEXIBLE BENEFITS PLAN

Information regarding the Proposal to Restate the 125 Flexible Benefits Plan

Contact Person:

<i>Name:</i>	<i>Brian Stott</i>
<i>Title:</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Resources</i>
<i>Phone:</i>	<i>510-494-4664</i>
<i>E-Mail:</i>	<i>bstott@fremont.gov</i>

RECOMMENDATION: Approve the restated IRC Section 125 Cafeteria Plan document.

2.15 AIR PRODUCTS FRANCHISE EXTENSION AGREEMENT

Adopt a Resolution of Intent to Hold a Public Hearing to Consider Granting a One-Year Franchise Extension Agreement to Air Products and Chemicals, Inc., and Direct the City Clerk to Publish the Notice Included in the Resolution of Intent

Contact Person:

<i>Name:</i>	<i>Randy Sabado</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Real Property Manager</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4715</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>rsabado@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATIONS:

- 1. Adopt a resolution of intent to grant a one-year extension to the Franchise Agreement with Air Products and Chemicals, Incorporated, a Delaware Corporation.*
- 2. Direct the City Clerk to publish the notice included in the resolution of intent within 15 days in a newspaper of general circulation within the City.*

2.16 IAFF/BATTALION CHIEFS MOU

Consideration of a Resolution Approving a new Memorandum of Understanding (2011-2013) with the International Association of Fire Fighters and Battalion Chiefs (IAFF)

Contact Person:

Name:	<i>Brian Stott</i>	<i>Mark Danaj</i>
Title:	<i>Director</i>	<i>Assistant City Manager</i>
Dept.:	<i>Human Resources</i>	<i>City Manager's Office</i>
Phone:	<i>510-494-4660</i>	<i>510-284-4000</i>
E-Mail:	<i>bstott@fremont.gov</i>	<i>mdanaj@fremont.gov</i>

RECOMMENDATION: *Adopt a resolution approving a two-year Memorandum of Understanding (MOU) that commences on July 1, 2011, and expires on June 30, 2013, between the City and the International Association of Fire Fighters and Battalion Chiefs (IAFF), and authorize the City Manager to execute the MOU.*

2.17 DELEGATION OF AUTHORITY TO CITY MANAGER DURING COUNCIL RECESS

Delegation of Authority to City Manager during Council Recess, July 27, 2011 through September 5, 2011

Contact Person:

Name:	<i>Susan Gauthier</i>	<i>Mark Danaj</i>
Title:	<i>Deputy City Clerk</i>	<i>Assistant City Manager</i>
Dept.:	<i>City Clerk</i>	<i>City Manager</i>
Phone:	<i>510-284-4076</i>	<i>510-284-4005</i>
E-Mail:	<i>sgauthier@fremont.gov</i>	<i>mdanaj@fremont.gov</i>

RECOMMENDATION: *Adopt resolution authorizing the City Manager or designee to approve and execute as necessary, on behalf of the City, the items set forth in this report, and to take the following actions:*

- 1. Authorize the City Manager or designee to (1) approve the plans and specifications for the Centerville Ballfield Synthetic Turf Conversion Project, 8717 (PWC), and (2) accept the bid and award the construction contract for the re-bid of the Centerville Ballfield Synthetic Turf Conversion Project, 8717 (PWC) to the lowest responsible bidder, in an amount not-to-exceed \$918,000.*
- 2. Authorize the City Manager or designee to (1) approve Amendment No. 1 to existing agreement for Engineering Design and Construction Inspection Services related to Sabercat Creek Restoration Project with Questa Engineering, in an amount not-to-exceed \$75,000, which will increase the total management service contract to an amount not-to-exceed \$205,000, and (2) retain the City Manager's amendment authority pursuant to the Purchasing Code at 20% of the original contract amount for future amendments.*

3. *Authorize the City Manager or designee to approve Amendment No. 1, Questa Engineering contract, to the existing agreement for cost sharing between the City and the Alameda County Flood Control and Water Conservation District (District) for the Sabercat Creek Restoration project in an amount not-to-exceed \$45,000, which will increase the total District's cash contribution from an amount not-to-exceed \$205,000 to fund the additional services to be provided by Questa Engineering and will decrease the District's in-kind services contribution from an amount not-to-exceed \$50,000 to an amount not-to-exceed \$20,000. (Companion item to the Questa Engineering contract amendment).*
4. *Authorize the City Manager or designee to execute an agreement with the Afghan Elderly Association for the Afghan Health Promoter project in an amount not-to-exceed \$98,900.*
5. *Authorize the City Manager or designee to (1) execute a contract with the Alameda County Area Agency on Aging for AFS Case Management services in an amount not-to-exceed \$30,922; and (2) appropriate an additional \$3,081 to account 1065325.*
6. *Authorize the City Manager or designee to execute a contract and any other implementing documents, with the Alameda County Area Agency on Aging for the MSSP Case Management program in an amount not-to-exceed \$53,140.*
7. *Authorize the City Manager or designee to (1) execute an agreement with the Alameda County Area Agency on Aging for senior center activities in an amount not-to-exceed \$11,874; and (2) appropriate an additional \$1,874 to account 1735331.*
8. *Authorize the City Manager or designee to execute an agreement not-to-exceed \$422,799 with Alameda County Behavioral Health Care Services to provide in-home mental health services to seniors.*
9. *Authorize the City Manager or designee to execute an agreement with the Alameda County Public Health Department for the Health Promoter project in an amount not-to-exceed \$169,250.*
10. *Authorize the City Manager or designee to execute an agreement and any other implementing documents, with the California Department of Aging for the MSSP Case Management program in an amount not-to-exceed \$209,965.*
11. *Authorize the City Manager or designee to execute Task Order No. 3 to the existing Joint Powers Master service agreement with the City of Newark for the Aging and Family Services Division of the Human Services Department to provide case management services in an amount not-to-exceed \$5,000.*
12. *Authorize the City Manager or designee to execute an agreement with the City of Union City for case management services in an amount not-to-exceed \$11,400.*
13. *Authorize the City Manager or designee to execute an agreement effective July 1, 2011 through June 30, 2012 with Abode Services for the operation of Sunrise Village homeless shelter in an amount not-to-exceed \$139,023.*
14. *Authorize the City Manager or designee to execute an agreement for FY 2011/12, effective July 1, 2011 through June 30, 2012, with LIFE ElderCare to provide meals on wheels in an amount not-to-exceed \$80,924*

15. *Authorize the City Manager or designee to (1) execute an agreement with Alameda County Probation Department for counseling and case management services funded through the Comprehensive Youth Services Act in an amount not-to-exceed \$421,661, and (2) appropriate an additional \$11,337 to Fund 133.*
16. *Authorize the City Manager to execute an agreement with Alameda County Behavioral Health for mental health services at the Fremont Family Resource Center in an amount not-to-exceed \$185,551.*
17. *Authorize the City Manager to execute an agreement with Alameda County Health Care Services for infrastructure support for the Fremont Family Resource Center in an amount not-to-exceed \$150,000.*
18. *Authorize the City Manager or designee to execute the Interim Agreement between the City and Alameda County Behavioral Health Care Services for mental health services provided by Youth and Family Services in FY 2011/12 in an amount not-to-exceed \$723,426.*
19. *Authorize the City Manager or designee to execute Task Order No. 6 to the existing Joint Powers Agreement with Fremont Unified School District for Youth and Family Services and the Fremont Family Resource Center to provide school-sites services in FY 2011 in an amount not-to-exceed \$104,450.*
20. *Authorize the City Manager or designee to revise an existing building rehabilitation program loan with Judith Radcliff Heyman, et al, decreasing the interest rate to 0%, and extending the loan period for an additional 20 years.*
21. *Authorize the City Manager or designee to approve Amendment No. 2 to Construction Management Service Agreement with Critical Solutions, Inc., for additional services in an amount not-to-exceed \$85,000, which will increase the total construction management services in an amount not-to-exceed \$664,520.*
22. *Authorize the City Manager or designee to approve Amendment No. 4 to the Design and Construction Administration Service Agreement with The Crosby Group for additional services in an amount not-to-exceed \$68,000, which will increase the total design and construction administration services in an amount not-to-exceed \$1,463,863.*
23. *Authorize the City Manager or designee to approve Amendment No. 1 to the Special Inspections Service Agreement with Consolidated Engineering Laboratories for additional on-call services by task order in an amount not-to-exceed \$30,000, which will increase the total special inspections services in an amount not-to-exceed \$129,671.*
24. *Authorize the City Manager or designee to approve Amendment No. 4 to the existing agreement for Fire Bond Construction Project Management Services with Harris and Associates, for additional construction administration services in an amount not-to-exceed \$38,000, which will increase the total construction administration services in an amount not-to-exceed \$2,849,720.*
25. *Authorize the City Manager or designee to implement Memorandum of Understanding(s) ratified by labor association(s) that meet Council-established labor relations direction with the six outstanding labor associations if agreement is reached during the August City Council recess.*

2.18 ADOPTION OF FINDING DENYING THE APPEAL OF THE CENTER THEATER USE PERMIT (PLN2011-00093)

Adoption of Findings Supporting the Denial of the Appeal of the Planning Commission's Denial of the Center Theater Conditional Use Permit Amendment to Expand the Allowable Uses to Include a Concert Hall, Banquet Facility, Dinner Theater, and Other Assembly Uses and Events, Where a Performing Arts Theater and Movie Theater are Currently Permitted

Contact Person:

Name:	<i>Joel Pullen</i>	<i>Barbara Meerjans</i>
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Dept.:	<i>Community Development</i>	<i>Community Development</i>
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RECOMMENDATION: *Consider and adopt findings.*

3. CEREMONIAL ITEMS

3.1 Proclamation: Festival of the Arts

4. PUBLIC COMMUNICATIONS

4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – None

PUBLIC FINANCING AUTHORITY – The Public Financing Authority Board will convene at this time and take action on the agenda items listed on the Public Financing Authority Agenda. [See separate agenda](#) (lilac paper).

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS – None.

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS

7.1 STRATEGIC SUSTAINABILITY STUDY

Consider the Strategic Sustainability Study and Adopt the Budget Principles and Strategic Sustainability Recommendations in the Strategic Sustainability Study

Contact Person:

Name:	Maya Williams	Mark Danaj
Title:	Management Analyst	Assistant City Manager
Dept.:	City Manager's Office	City Manager's Office
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E-Mail:	mwilliams@fremont.gov	mdanaj@fremont.gov

RECOMMENDATION: Consider the Strategic Sustainability Study and adopt the Budget Principles and 33 Strategic Sustainability Recommendations in the Strategic Sustainability Study.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals

8.1.1 COUNCILMEMBER DUTRA REFERRAL: Move City Hall from Midtown to Warm Springs

The area around the Warm Springs BART Station, located at the intersection of two major freeways (680 & 880), represents one of the most significant economic development opportunities in the State of California. It is for this reason that the City has appropriately designated this area as a Priority Development Area (PDA) worthy of significant investment of staff time and the leveraging of regional, state and federal funds for the planning, infrastructure and environmental work necessary to optimize it's potential for success.

The City area bounded by Fremont Blvd., Mowry, Paseo Padre Parkway and Walnut has also been designated a Priority Development Area (PDA) and has historically been the City's hope for the creation of a Downtown. This effort has been most recently documented in both the Downtown Plan and the update to our General Plan.

Because of the current focus on both Priority Development Areas, it is important, appropriate and timely that the City evaluate the relative merits of locating a Civic component, inclusive of a City Hall, Cultural Arts Center, Civic Plaza and associated parking structure in both areas. The evaluation should include, but not be limited to, the ability to leverage regional, state and federal funds for the planning, infrastructure and environmental work necessary to complete the Civic Project, the economic impact to the City, likelihood and timing of the development, ability to spur retail development

and financial implications for moving the city's functions from the historically planned Downtown area.

8.2 Oral Reports on Meetings and Events

8.2.1 Update on Niles Canyon Safety Improvement Project Stakeholder's Meeting

9. ADJOURNMENT



**REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING**

JULY 26, 2011

***2.3 FINAL MAP FOR TRACT 7986 AND IMPROVEMENT AGREEMENTS – 3651 WALNUT AVENUE, UH DOWNTOWN FREMONT, LLC**
Approval of Final Map for Tract 7986, Improvement Agreements for Construction of Public Streets (Walnut Avenue, California Street and Beacon Avenue), Private Improvements (Common Areas and State Street Plaza) and Dedication of Land and Public Easements for Tract 7986

Contact Person:

Name:	Dilip Kishnani	Norm Hughes
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Dept.:	Public Works	Public Works
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Executive Summary: The purpose of this report is to recommend that the City Council approve Final Map 7986, authorize the City Manager to execute agreements for construction of public street improvements, private common area improvements including State Street Plaza improvements for Tract 7986, and accept the dedications of public streets and easements subject to improvement.

DISCUSSION/ANALYSIS: Tract 7986 is located on the west side of the vacant block bounded by Beacon Avenue, California Street, Liberty Street and Walnut Avenue. The project encompasses 4.2 acres and includes 301 residential condominium units, an approximately 17,000 square foot State Street Plaza, and approximately 1,200 square feet of office/commercial space. The project is generally in conformance with the Vesting Tentative Tract Map 7986 (PLN2009-0009) approved by the City Council in March 2009, and the Major Amendment to Planned District P-2009-9 approved by the City Council in June 2011. The developer, UH Downtown Fremont, LLC, has created Covenants, Conditions, and Restrictions (CC&Rs) for Tract 7986 that are consistent with and implement all of the provisions of the Vesting Tentative Map.

The developer has signed an agreement and posted bonds to guarantee construction of the public streets (California Street, Beacon Avenue and Walnut Avenue). Public street improvements include removing existing driveways and sidewalk; installing a new driveway and sidewalk; planting street trees; grinding and overlaying portions of existing pavement; utility relocations; service lateral installations; and other miscellaneous items of work. The bond amounts for construction of the public street improvements are \$906,000 for faithful performance of the agreement and \$906,000 for payment of labor and materials, based on preliminary cost estimates. The design and construction of the street improvements have been coordinated with the City's Phase 1 – Beacon Avenue, California Street, and Walnut Avenue Project, PWC 8749, for which the City Council awarded a contract on June 28, 2011. Tentative Tract 7986 conditions of approval obligated the applicant to install the streetscape improvements now being installed with the Transportation for Livable Communities (TLC) grant, which is funding 80% of the City project. The 20% local match of the grant funds is being funded by the applicant, through the purchase price for the vacated portion of California Street, which will be incorporated into the project.

The developer has also signed an agreement and posted bonds to guarantee construction of the common area improvements including the State Street Plaza improvements. The bond amounts for construction of

the common area improvements are \$2,306,000 for faithful performance of the agreement and \$2,306,000 for payment of labor and materials, based on preliminary cost estimates.

The Final Map has been reviewed and is now ready for City Council approval.

FISCAL IMPACT: There is no impact to the City. All improvements and inspection staff time will be paid for by the developer.

ENVIRONMENTAL REVIEW: City Council adopted a mitigated negative declaration and mitigation monitoring program for the project in March 2009. The mitigated negative declaration includes mitigation measures that would reduce the identified impacts to less than significant levels. The Final Map and improvement plans are consistent with the original project description, scope of work and identified mitigations of the adopted mitigated negative declaration. No further environmental review is required.

ENCLOSURE:

- [Draft resolution](#)
- [Site Plan](#)

RECOMMENDATION: Adopt a resolution:

1. Approving the Final Map for Tract 7986.
2. Approving the Agreement for Public Improvements entitled “Public Improvement Agreement, Tract 7986”, with the developer, UH Downtown Fremont LLC., a Delaware limited liability company, and authorizing the City Manager or his designee to execute the agreement on behalf of the City.
3. Approving the Agreement for Private Improvements entitled “Private Improvement Agreement, Tract 7986”, with the developer, UH Downtown Fremont LLC., a Delaware limited liability company, and authorizing the City Manager or his designee to execute the agreement on behalf of the City.
4. Accepting the developer’s offer of dedication of easements, as identified on the Final Map, provided that the acceptance of the offer of dedication of easements for public roadway purposes shall be conditioned upon the developer’s completion of improvements to the satisfaction of the City Engineer.

***2.4 PURCHASE OF BACKUP AND RECOVERY HARDWARE AND SOFTWARE**
Authorize the City Manager or Designee to Issue a Purchase Order to Dell Marketing L.P.
for EMC Data Domain Backup and Recovery Hardware and EMC NetWorker Software

Contact Person:

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Executive Summary: The Information Technology Services Department (ITS) has been using the Symantec Backup Exec software since the late 1990s for backup and recovery of electronic data in the physical server environment. In 2009, the ITS Department purchased PHD Technologies Virtual Backup software for backup and recovery of electronic data in the virtual server environment. Both physical and virtual backups are made to several outdated Overland (Adaptec) disk storage devices, which have proven to be unreliable and inconsistent for backup and recovery purposes. As a result, the ITS Department researched several backup and recovery solutions. After a thorough and extensive evaluation, including product demonstrations and reference checks with agencies using the respective solutions, the ITS Department determined that the EMC Data Domain DD670 hardware appliance and EMC NetWorker software best meet the needs of the City for backup and recovery purposes. The State of Minnesota Department of Administration, a member of the Western States Contracting Alliance (WSCA), entered into a Master Price Agreement with EMC Corporation for computer equipment, software, peripherals and related services as a result of a competitive bidding process. WSCA is a cooperative group contracting consortium for states, including California, and political subdivisions, such as cities. Dell Marketing L.P., is an authorized reseller for the EMC products and has quoted pricing that reflects a 50 percent discount from list price, which is greater than the 24 percent and 11 percent discounts under the WSCA Master Price Agreement. Staff is recommending that the City Council authorize the City Manager or his designee to issue a purchase order to Dell Marketing L.P., for the EMC Data Domain DD670 backup and recovery hardware and the EMC NetWorker software in an amount not-to-exceed \$215,653.

BACKGROUND: The ITS Department has been using the Symantec Backup Exec software since the late 1990s as the backup and recovery solution for the City's physical servers. When the ITS Department consolidated the majority of physical servers through virtualization in 2009, the City purchased PHD Technologies Virtual Backup software to back up and recover data from the five physical servers hosting over 80 virtual servers. Both the physical and virtual server environments are backed up to several Overland (Adaptec) disk storage devices that have limited storage capacity and very slow throughput due to the age of the technology. As a result, the backups have been inconsistent and sometimes unreliable.

DISCUSSION/ANALYSIS: Backup and recovery of data is one of the core functions of the ITS Department. It is essential that reliable backups of electronic data for both critical and non-critical systems are completed on a consistent and reliable basis in order to ensure business continuity by quick recovery of data in the event of a disaster or hardware system failure.

Having two different backup solutions, one for the physical environment and one for the virtual environment, adds complexity to the backup and recovery process. In addition, the ITS Department staff is required to be familiar with two different software products for backup and recovery purposes. The ITS Department is currently backing up 20 terabytes of electronic data, which continues to increase by 3 to 5 terabytes each year. The existing hardware and software backup systems are incapable of meeting the demands for reliable and consistent backup and recovery for this amount of electronic data.

In an effort to improve the reliability of backup and recovery of electronic data, the ITS Department researched various backup solutions. Staff narrowed down the selection to the following four solutions: the EMC Data Domain DD670 disk appliance and EMC NetWorker software, the Quantum disk storage, the CommVault software product, and the Barracuda appliance. The vendors for each of these solutions presented information on their products and demonstrated the product to the ITS staff. Staff reviewed the backup systems' specification sheets and white papers and compared the features of each solution. Staff also conducted reference checks with other agencies and companies who use the respective products.

After a thorough and extensive evaluation, Staff selected the EMC Data Domain DD670 disk appliance and the EMC NetWorker software as the backup and recovery products that best meet the needs of the City. EMC is one of the most respected and largest manufacturers in the storage and backup industries. The proposed EMC Data Domain DD670 disk appliance is configured to back up 32 terabytes of data and has the ability to expand to meet the City's future needs. The EMC Data Domain DD670 disk appliance has backup and recovery features including the following: data compression, de-duplication (a specialized data compression technique for eliminating redundant data), encryption, ease of administration, data retention, and reporting. In addition, the EMC Data Domain solution offers an off-site backup replication service that enables electronic data to be stored at a remote location for disaster recovery purposes.

The State of Minnesota Department of Administration, on behalf of the Western States Contracting Alliance (WSCA), issued a request for proposals for backup and recovery solutions. Through this competitive bidding process, WSCA entered into a Master Price Agreement with EMC Corporation for its computer hardware and software products that are sold through authorized partners. The State of California has a Participating Addendum in place with EMC, and the City may take advantage of the WSCA contract terms by issuing a purchase order to one of EMC's authorized resellers. Dell Marketing L.P., is one of these authorized resellers.

Public Contract Code Sections 10298 and 10299 authorize the City to utilize state contracts to purchase goods, information technology, and services without competitive bidding. The City's purchasing ordinance also authorizes the City to enter into a contract for the acquisition of personal property based upon the terms of an agreement with the contractor and another public agency without a competitive bidding process, also known as "piggy-backing," where the City Manager makes the findings set forth in Fremont Municipal Code (FMC) Section 2-9702, as described below.

First, the terms of the contract are materially the same as the existing contract between the manufacturer and the State, in that the City is using the WSCA agreement itself.

Second, the terms of the WSCA contract are more beneficial than the City would otherwise be able to obtain through its own competitive bidding process. The WSCA contract leverages the collective buying power of multiple states and other governmental entities and enables the City to obtain more beneficial pricing due to the volume of purchases contemplated by the agreement as compared to the City requesting quotations for its own needs. The WSCA agreement for EMC Data Domain and NetWorker products contains baseline pricing with guaranteed discount levels of 24 percent and 11 percent.

Finally, the WSCA agreement is consistent with the purposes and goals of the Purchasing Code as set forth in FMC Section 2-9102. As evidenced by the State of California's participation in the agreement, the WSCA contract is structured to comply with California procurement codes, guidelines and policies, which are similar to those of the City.

In addition, as a result of the partnership between EMC and Dell, EMC approved a 50 percent discount from the list pricing, which is a significantly higher discount than the pricing available under the WSCA contract. The other terms and conditions of the WSCA Master Price Agreement with EMC apply to the purchase.

The price breakdown for the EMC DataDomain DD670 hardware and NetWorker software is as follows:

<i>Description</i>	<i>Amount</i>
EMC DD670 Hardware	\$115,057.00
Upgrade: License Boost DD670	\$ 5,114.00
EMC NetWorker Software License	\$ 12,434.00
Sales Tax on Hardware and Software	\$ 11,602.94
Professional Services	\$ 14,546.00
Enhanced System Support – DD670	\$ 13,808.00
Enhanced Software Support – NetWorker	\$ 23,491.00
Subtotal	\$196,052.94
10% Contingency	\$ 19,600.00
TOTAL	\$215,652.94

FISCAL IMPACT: The total not-to-exceed amount for the EMC Data Domain DD670 disk appliance and EMC NetWorker software is \$215,653, including professional services for installation, first year warranty and annual maintenance, applicable sales tax and a 10 percent contingency. There are no shipping charges under the WSCA contract. There are sufficient funds appropriated in the Information Technology Services Department FY 2011/12 equipment replacement budget (620-1716).

ENVIRONMENTAL REVIEW: Not applicable

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or his designee to issue a purchase order to Dell Marketing L.P., for the purchase of the EMC Data Domain DD670 backup and recovery hardware and the EMC NetWorker software in an amount not-to-exceed \$215,653.

***2.5 2011 BRIDGE PREVENTATIVE MAINTENANCE PROJECT CONTRACT AWARD**
Approval of Plans and Specifications and Award of Contract to the Lowest Responsible and Responsive Bidder for the 2011 Citywide Bridge Preventative Maintenance Project, City Project No. 8120-B (PWC), Federal Project No. BPMP-5322(045)

Contact Person:

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Executive Summary: The purpose of this report is to recommend that the City Council approve the plans and specifications, accept the bid and award the contract for the Citywide Bridge Preventative Maintenance Project, City Project No. 8120-B (PWC) to Victory Engineers, Inc., in the amount of \$186,186.00.

BACKGROUND: Last year, the City of Fremont accepted federal grant funds in the amount of \$322,862 through the Bridge Preventative Maintenance Program (BPMP), administered by Caltrans Division of Local Assistance. The purpose of the BPMP is to help local agencies extend the life of their bridges by performing certain activities that have been pre-approved by the Federal Highway Administration (FHWA) that correct minor deficiencies early in a bridge's life. This project is part of the BPMP and will perform preventative maintenance work to four (4) City-owned bridges. The scope of work is determined in accordance with the recommendations contained in Caltrans' biennial inspection of City bridges.

At the May 11, 2010 meeting, City Council appropriated the grant funds to the Citywide Bridge Preventative Maintenance Project, City Project No. 8120-B (PWC). The BPMP pays for 88.53% of eligible expenses incurred for engineering design, construction engineering, and the construction contract. The City's required local match for these grant funds pays for the remaining 11.47% of eligible expenses using State gas tax monies.

DISCUSSION/ANALYSIS: This project will perform preventative maintenance work to four City bridges: the Alvarado Bridge, Auto Mall Bridge, Isherwood Bridge, and the Old Canyon Bridge. The work to each bridge consists of some combination of the following: repairs of spalls to the concrete deck surface, replacement of joint seals, and an application of a protective sealant treatment to the deck surface.

Proposed Construction: Deck spalls are small areas on the bridge deck surface where portions of the concrete have broken loose. The project will remove any unsound concrete in the area of a deck spall and fill the void with rapid setting concrete patches. The two bridges requiring this work are the Alvarado and Isherwood Bridges.

Deck joints in bridges are necessary to allow for expansion and contraction of the bridge caused by temperature changes. Since water can cause deterioration in concrete and steel elements of a bridge,

joint seals are installed to prevent water intrusion into the joints. The project will replace the deteriorated joint seals at the Alvarado Bridge, the Isherwood Bridge, and the Old Canyon Bridge.

Cracking in concrete bridge decks is widely regarded as a long-term durability and maintenance problem that requires attention. If left untreated, these cracks propagate through the deck, allowing rapid ingress of moisture and chloride ions into the concrete interior, leading to deterioration due to rebar corrosion. High molecular weight methacrylate is a sealant material commonly used on bridge decks to address the problem of deck cracking. The project will apply this sealant to the decks of all four bridges.

Traffic Control: Due to the nature and location of the project at key access ways (at bridges that cross the Alameda County Flood Control Channel and at the Auto Mall Bridge, which crosses over the Union Pacific Railroad and BART tracks), staff anticipates that residents and the traveling public will experience some inconvenience during construction. Lane closures will be necessary in order to facilitate the proposed bridge work.

To mitigate the impact of traffic delays on the public, the contractor will be required to submit detailed traffic control plans for each bridge. City staff will review all traffic control plans prior to construction and monitor traffic control work during construction to ensure all possible effort is made to minimize the impact to the public. Lane closures will be restricted so as not to occur during morning and afternoon traffic peaks. Advance construction message signs informing the public of the upcoming bridge work will be posted before each work zone a minimum of seven days prior to the anticipated construction. The signs will advise the public of possible delays due to construction and list the anticipated dates of work specific for each bridge.

Due to the high traffic volume during the day, construction on the Auto Mall Bridge will be scheduled at night. The Alvarado Bridge may also be scheduled at night depending on the proposed traffic controls proposed by the contractor and approved by the City.

Residents and businesses located near the construction work will receive a flyer describing the project and its expected impact on traffic at least two weeks before work begins in their area. Follow-up notices will again be distributed no later than two days prior to the start of construction.

During construction, electronic changeable message boards as well as temporary construction signs will be positioned in advance of the construction work zone to alert the public of the bridge work ahead and potential delays.

Bid Results: Staff opened bids on July 5, 2011, for the Citywide Bridge Preventative Maintenance Project, at Various Locations; 8120-B (PWC). Three bids were received, as follows:

<i>Bidder</i>	<i>Total Bid</i>	<i>Rank</i>
Victory Engineers, Inc.	\$186,186.00	1
Truesdell Corporation of California, Inc.	\$224,224.00	2
Myers and Sons Construction, LP	\$277,724.00	3
Engineer's Estimate	\$220,000.00	

The low monetary bidder, Victory Engineers, Inc., is experienced in this type of project, is a responsible contractor and submitted a responsive bid.

Project Costs: The following is a summary of actual and estimated project costs:

Preliminary Engineering, Design & Administration	\$ 28,000
Technical Consultant (S&C Engineers)	17,000
Permits	2,000
Construction Contract (Low Bid) (includes \$20,000	
Construction Contingency)	186,186
Construction, Surveying & Administration (estimate)	20,000
Project Contingency	<u>44,000</u>
Total Estimated Cost:	\$297,186

Funding: Funding available for the project is as follows:

<u>Source</u>	<u>Description</u>	
Fund 142	State Gas Tax 2105	\$467,000
Fund 522	BPMP Federal Grants	<u>322,862</u>
	Total Estimated Available Funding:	\$789,862

Based on the contract amount and the project cost, there are sufficient funds budgeted for the project. The City has a State-approved bridge maintenance program that will repair other bridges within the City as part of a multi-phase program. The remaining funds will be used for future phases of the Citywide Bridge Preventative Maintenance Program, although any federal grant funds that are not used for this phase will be returned. Staff is currently applying for another grant for the next phase of the program.

FISCAL IMPACT: The BPMP funds allocated to this project are \$322,862. The required local match of 11.47% in the amount of \$41,831 will be funded through State Gas Taxes. There will not be an increase in the annual cost of maintenance for labor and materials as a result of this project.

ENVIRONMENTAL REVIEW: The project has been cleared with a programmatic categorical exclusion in conformance with the National Environmental Policy Act (NEPA). This project is also categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) as the maintenance and repair of existing facilities.

ENCLOSURE: None

RECOMMENDATION: Approve the plans and specifications, accept the bid and award the construction contract for the Citywide Bridge Preventative Maintenance Project, City Project No. 8120-B (PWC) to the lowest responsible bidder, Victory Engineers, Inc., in the amount of \$186,186.00 and authorize the City Manager or his designee to execute the contract.

***2.6 ACCEPTANCE OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS**
Accept the Highway Safety Improvement Program (HSIP) Grant and Appropriate the Grant Funds of \$517,680 to the Walnut Avenue-Argonaut Way/Parkhurst Drive Lane Reduction and Roundabout Project, City Project No. 8669(PWC)

Contact Person:

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Executive Summary: The Caltrans Division of Local Assistance invited local agencies to submit applications for the Highway Safety Improvement Program (HSIP) funds in October 2009. Staff responded by submitting an application for a total of \$517,680 for a roundabout to improve safety at the intersection of Walnut Avenue – Argonaut Way/Parkhurst Drive and reduce speeding on roadway approaches from Walnut Avenue and Argonaut Way to the intersection. The City was successful in securing the grant for the full \$517,680. In order to initiate this project, staff recommends that the City Council authorize the City Manager or designee to: accept the HSIP grant funds; appropriate the funds to the project PWC accounts; execute any associated documents; and authorize staff to begin design and conduct community engagement on the Walnut Avenue-Argonaut Way/Parkhurst Drive Roundabout and Lane Reduction Project (PWC8669).

BACKGROUND: Walnut Avenue and Argonaut Way are connected at a curve with Parkhurst Drive as a three-way intersection. Walnut Avenue and Argonaut Way are four-lane major streets adjacent to the Fremont Hub shopping center. Parkhurst Drive is a two-lane residential street. See the enclosure for location details. The intersection of Walnut Avenue/Argonaut Way/Parkhurst Drive has a history of traffic accidents and speeding. Accident records show that speeding by vehicles approaching the curve at the intersection from Walnut Avenue and from Argonaut Way is the primary cause of accidents at and near the intersection. Between January 2000 and December 2008, there were 22 accidents at or near the intersection, with 12 accidents related mainly to speeding/running off the roadway, two of the accidents involved bicycles, one involved pedestrians, and there were no fatalities.

DISCUSSION/ANALYSIS: To evaluate safety and traffic operations and conditions at the intersection and analyze possible improvement measures, staff applied for and was awarded a Bicycle/Pedestrian and Safety Technical Assistance Study. The study was funded by Metropolitan Transportation Commission (MTC), and conducted by consultants selected by MTC at no cost to the City. The study recommended the following improvements: 1) installation of a roundabout at the intersection of Walnut Avenue/Argonaut Way/Parkhurst Drive in order to minimize traffic conflicts, control speed, and improve pedestrian crossings, and 2) reduce Walnut Avenue (between Fremont Boulevard and Parkhurst Drive) and Argonaut Way (between Parkhurst Drive and Mowry Avenue) from four lanes to two lanes in order to install a median, allow on-street parking and provide space for bike lanes. These measures should reduce speeding, improve bicycle safety and improve pedestrian crossings from the residential neighborhood to the Fremont Hub shopping center. The enclosure shows a concept plan of the improvements.

Staff developed a plan to implement and construct the intersection and roadway improvements recommended in the MTC study. In October 2009, staff applied for a \$517,680 Highway Safety Improvement Program (HSIP) grant. The overall purpose of the HSIP program is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements. For a project to be eligible for HSIP funding, a specific safety problem must be identified for correction and the project must substantially improve the situation.

Staff was notified by Caltrans that the City would be receiving the full grant amount. The HSIP grant will fund up to 90 percent of the project cost and requires a ten percent local match. There are sufficient funds in the Measure B Bicycle/Pedestrian funds allocated to the project for the ten percent local match. In order to initiate this project, staff recommends that the City Council authorize the City Manager or designee to accept the HSIP grant funds, appropriate them to the project, and authorize staff to begin design and conduct community engagement on the Walnut Avenue-Argonaut Way-Parkhurst Drive Roundabout and Lane Reduction Project, PWC8669. Staff will come back to Council for the approval of plans and award of the project.

FISCAL IMPACT: There is no impact to the General Fund. The total project costs are \$575,200. The 10% local match required is \$57,520. There is a balance of \$47,000 in the project's account (509PWC8669) from prior Measure B Bike/Pedestrian Funds allocation. There are sufficient Measure B Bike/Pedestrian Funds that can be used for the remaining \$10,520 needed for the local match. Therefore, staff is recommending Council appropriate these additional funds to the project account to provide the full local match.

ENVIRONMENTAL REVIEW: Appropriate environmental review will be conducted prior to completion of the design work for this project.

ENCLOSURE: [Project Concept Plan](#)

RECOMMENDATION:

1. Authorize the City Manager or designee to accept the HSIP grant and to execute any associated grant documents.
2. Appropriate funds in the grant amount of \$517,680 to 522PWC8669, Walnut Avenue-Argonaut Way/Parkhurst Drive Roundabout and Lane Reduction Project.
3. Transfer \$10,520 from 509PWC8541, Measure B Bike/Pedestrian Funds to 509PWC8669, Walnut Avenue-Argonaut Way/Parkhurst Drive Roundabout and Lane Reduction Project.

***2.7 HEARING OFFICER SERVICES CONTRACT WITH DATA TICKET, INC.
Request for Approval of Contract with Data Ticket, Inc., for the Purpose of Providing
Parking Citation and Administrative Remedy Ordinance Hearing Officer Services**

Contact Person:

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Dept.:	Police	Police
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Executive Summary: This report recommends approval of a five-year contract with Data Ticket, Inc., for Parking and Administrative Remedy Ordinance (ARO) Hearing Officer Services.

Over the past five years, the City has contracted with Data Ticket, Inc., for Parking and Administrative Remedy Ordinance (ARO) Hearing Officer Services. Data Ticket, Inc., receives and processes appeals and schedules hearings as a remedy for citations issued by City employees to private persons, businesses and organizations for violations of City ordinances and parking violations.

On June 30, 2011, the current contract with Data Ticket, Inc., for Parking and Administrative Remedy Ordinance (ARO) Hearing Officer Services expired. In an effort to test the market and analyze the current level of service the City has been receiving, the City issued an RFP for a new service contract. One consultant submitted a proposal in response to the RFP. After a careful review, it was determined that the proposal met the City's needs. Data Ticket, Inc., was selected to be awarded with a new contract. Staff recommends the City Council approve a five-year contract with Data Ticket, Inc., for continued hearing officer services.

BACKGROUND: The City of Fremont issues administrative citations as a remedy for violation of City ordinances and specific Vehicle Code sections. The ability to issue administrative remedy citations is authorized and described by California Vehicle Code Division 17, Chapter 1, Article 3 (hereinafter "Article3") and ARO Citations as authorized under Government Code section 53069.4, Fremont Municipal Code sections 1-4100 et seq., and Fremont Administrative Regulations.

Most recipients of citations for non-compliance with City ordinances pay the fines due, as well as associated fees. A varying percentage of customers each year do not pay fees due or fines associated with citations issued to them for violations. A smaller percentage actually contest or appeal their citation due to varying reasons. As required by law, the City is required to provide a hearing for all appeals that have met the appropriate deadlines.

Data Ticket, Inc., offers the City a package program that includes the hiring of independent sub-contractors to act as independent administrative hearing officers to adjudicate contested Parking and ARO citations. Hearing officers must not, directly or indirectly, be linked to the amount of fines assessed by the hearing officer, or by the number of cases decided in favor of the City or in favor of the contesting party. They must also be separate and independent from the citation collection or processing function, and participate in continuing education programs for hearing examiners and enforcement

officers. The rate offered for the hearing officer services is \$75.00 per hour. The agreement does not include a CPI or annual increase. The utilization of a contractor to provide this service is a cost-beneficial to the City and has significantly reduced staff time required to handle the same services. The Parking Citation and ARO program generates adequate fine revenue to support the hearing officer service program costs. Billable hours include the time expended in direct performance of the following duties:

- Reviewing a case file in preparation for an administrative hearing.
- Conducting the administrative hearing.
- Preparing the written decision.
- Serving the written decision on the appellant and the City.
- Preparing the record and returning the file to Data Ticket, Inc.

DISCUSSION/ANALYSIS: Over the five years of the existing contract, the City has spent on average approximately \$8,000 - \$9,000 annually for the hearing officer services. The hearing officer assigned to Fremont normally conducts one day of hearings in Fremont each month. Staff has been very satisfied with the level of service and professionalism demonstrated by the hearing officer. Due to the third party relationship with Data Ticket, Inc., staff has very little interaction with the hearing officer and less administrative work due to the effective system that is in place.

	<i>2008</i>	<i>2009</i>	<i>2010</i>
No. of Parking and ARO Citations Issued	11,410	11,735	12,415
No. of Hearings	107	109	149
Contract Cost to City	\$8,475.00	\$8,100.00	\$9,000.00

In 2010, the City experienced a moderate increase in the number of appeal requests. Staff believes this is directly correlated with issuing a higher number of citations in 2010 and due to the downturn of the economy. This higher number of contested citations is similar to the experience this past year on appeals at the Superior Court for Vehicle Code violations. While it is difficult to predict the number of appellants who will contest a citation, staff believes they will continue to remain consistent and does not anticipate a significant change in the service requests for the additional years of service.

The proposed contract with Data Ticket, Inc., is for the amount of \$12,000 with a “not to exceed” amount of \$15,000 per year for the purpose of providing Parking Citation and Administrative Remedy Ordinance Hearing Officer Services.

FISCAL IMPACT: The parking citation and ARO program generates adequate fine revenue to support the Hearing Officer Service Program costs. Because the program is cost-covering, there is no added General Fund burden associated with amending the contract.

ENVIRONMENTAL REVIEW: None

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or designee to execute an agreement with Data Ticket, Inc., to provide Hearing Officer Services for parking and Administrative Remedy Ordinance citations for a term of five years.

***2.8 CITATION PROCESSING AND COLLECTIONS CONTRACT**

Request for Approval of Contract with Data Ticket, Inc., for the Purpose of Providing Parking Citation and Administrative Remedy Ordinance Processing and Collection Services

Contact Person:

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Dept.:	Police	Police
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Executive Summary: This report recommends approval of a five-year contract with Data Ticket, Inc., for processing and collection services of Parking and Administrative Remedy Ordinance citations.

On June 30, 2011, the current agreement with Data Ticket, Inc., for Processing and Collection Services of Parking and Administrative Remedy Ordinance (ARO) citations expired. In an effort to test the market and analyze the current level of service the City has been receiving, the City issued an RFP for a new service contract. Five consultants submitted proposals in response to the RFP. The proposals and companies varied drastically in price and services, making it a difficult review. An eight member committee representing Finance (including Revenue), Police, and Code Enforcement reviewed all five of the proposals and narrowed the list to two consultants. The two consultants were asked to provide side-by-side costs comparisons and further demonstrate their experience and knowledge in the handling of ARO citations and their collection processes utilizing the Franchise Tax Board Intercept Agency Program. Data Ticket, Inc.'s knowledge in the area of processing ARO citations specifically and their experience with the Franchise Tax Board Intercept Agency program were contributing factors in staff's decision. In addition, their costs for new handheld ticket writers and collection fees were less than the competitor. Based upon the proposal, additional analysis and satisfaction with service, the current vendor, Data Ticket, Inc., was unanimously selected by the committee to be awarded a new contract.

The program Data Ticket, Inc., has offered includes all aspects of a full-service citation processing and collection program. Administrative citations require significant follow-up work to assure payment of fines, mailing of delinquency letters and the timely processing of appeals. The utilization of a full-service vendor to provide this service is a cost-benefit way for the City to do business. Data Ticket, Inc., has successfully provided this service to the City since October 2000, with minimal errors in comparison to the volume of citations processed annually. In addition to the continuation of processing services, Data Ticket, Inc., is also offering to enhance services in an effort to streamline and reduce costs through the means of citation issuance and processing with electronic handheld ticket writers and desktop software that will be made available to City staff.

Staff recommends the City Council approve a five-year contract with Data Ticket for continued citation processing and for collection services related to delinquent citations. The agreement includes the services of processing citations issued by City employees, collection services, reporting, software, hardware and annual software and equipment maintenance.

BACKGROUND: The City of Fremont issues administrative citations as a remedy for violation of City ordinances and specific Vehicle Code sections. The issuance of citations as a remedy for parking citations is authorized in California Vehicle Code Division 17, Chapter 1, Article 3. Government Code section 53069.4, Fremont Municipal Code sections 1-4100 et seq., and Fremont Administrative Regulations outline the processes and procedures required to issue administrative citations (AROs) for regulation of local laws.

Citations are issued by Animal Services Officers, Community Service Officers, Police Officers, Code Enforcement Officers, Park Rangers, Business Tax Employees, Environmental Services Specialists and Fire Department Code Enforcement Officers. Unlike many large cities in the Bay Area, Fremont does not have a dedicated parking enforcement unit, metered parking or any other formalized parking enforcement programs. The enforcement of parking violations is an ancillary duty to an employee's primary job function.

In 2010, the Police Department purchased two handheld ticket writers that have increased productivity, streamlined communication and eliminated paperwork. The units were tested by the Handicapped Enforcement Volunteers and Community Service Officers assigned to the Traffic Unit. The issuance of citations via electronic means has had a positive impact on the program and has contributed to reducing costs for the program. The Police Department plans to purchase at least two additional handheld units at a cost of approximately \$3,200 each, and distribute them to Community Service Officers assigned to the Patrol Division during the next contract term. The cost includes all hardware, software, licensing and maintenance fees required over the course of the contract. Staff will continue to monitor the use of new technology and analyze the cost benefits associated with the use of handheld ticket writers.

A very small percentage of citations are contested, and most of the recipients of citations for non-compliance with City ordinances pay the fines due, as well as the associated fees. A varying percentage of customers each year do not pay fees due or fines associated with citations issued to them for violations. Due to a significant volume of unpaid citations and limited staff to coordinate an internal collection program, in 2005 the City elected to participate in the Franchise Tax Board's (FTB) Interagency Intercept program. This program collects unpaid citations by a method similar to that of a collection agency, through State tax refunds. During the first five years of the program, collections through the FTB's program have exceeded staff's original estimate and expectations. While the program hasn't eliminated all outstanding citations, it has made a significant impact on the program. Participation has also drastically reduced staff time required to initiate collections via a third party collection service. Overall, the collection expense is directly related to the actual collections.

DISCUSSION/ANALYSIS: Data Ticket, Inc., offers the City a package program that includes processing all citations for a per-citation fee dependent upon the type of citation. The proposed five-year contract agreement allows a fee of \$1.05 per parking citation issued manually, and \$0.65 if issued electronically. The processing and collection of administrative fines submitted manually allows a fee of \$3.00 per citation, and if issued electronically, \$2.50. Based upon the number of citations generated over the last three years and the costs associated with the program, the cost is estimated at approximately \$130,000 annually for processing 12,000 citations. Additional associated administrative costs are estimated at \$8,500 per month. These costs include State mandated payments to the FTB and DMV associated with the processing of administrative parking citations and FTB collection services.

The following chart displays the total number of citations issued over the last three years, payments and revenue collected.

	2008	2009	2010*
Parking Citations Issued	5,565	5,336	5,877
ARO Citations Issued	5,845	6,399	6,538
Gross Revenue, Parking	\$487,453.90	\$449,386.47	\$426,483.86**
Gross Revenue, ARO	\$564,568.37	\$469,691.21	\$339,176.45***
Payments to Data Ticket, Inc.	\$134,775.82	\$ 83,811.99	\$ 95,685.65
Other Payments & Admin Costs (incl. payments to State, DMV, etc.)	\$ 96,426.06	\$106,056.91	\$103,043.88
Total Net Revenue	\$820,820.39	\$729,208.78	\$566,930.78

*Citations still pending payment, appeal and FTB collection process.

**1,131 citations still open.

***2,001 citations still open.

In addition, the contract provides for Data Ticket, Inc., to perform services related to the collection of past due citations. Data Ticket will conduct follow-up and tracking of each citation issued to determine if payment is received or delinquent. In the event a payment is delinquent, Data Ticket, Inc., will begin the process to collect the past due amount from responsible parties, including use of the Franchise Tax Board's Interagency Intercept Program to collect from tax refunds or lottery winnings, when appropriate. There are fees associated with this work including a \$3.00 Social Security request required for each individual, a 15% fee for notices, file placement and updates, and 23% of fines collected. Collection expense is directly related to actual collections. The exact amount of revenue that will be collected cannot be accurately estimated from year to year, but based on collections over the last five years, the City will likely collect in excess of \$100,000 annually during the five years of this agreement.

In instances where recipients do not pay citations, additional letters of delinquency of payment are required. This effort requires added time to complete. Current practices leave most of the follow up work to City staff and, given the reductions in personnel over the past few years, staff time to complete follow up work on past due citations is limited. By continuing to contract the services with Data Ticket, Inc., the City will have a better opportunity to collect on past due citations for a nominal percentage of the collected amounts, proposed at 23 percent in this agreement. Staff believes using Data Ticket, Inc., to perform this function is a cost-beneficial way to collect additional revenue.

This table reflects the number of citations successfully collected and the revenue generated through the FTB Intercept Program:

	2008	2009	2010
Revenue Generated through FTB collections	\$107,919.84	\$129,226.81	\$142,129.58

The recommendation to contract with Data Ticket for processing citations and past due citation collection is based upon extension of an already existing agreement for processing citations because the firm has provided excellent service with minimal complaint given the volume of work processed for the

City. Additionally, the firm offered to include the debt collections process at a rate that is five percent less than standard collections services. This will allow the City to realize a greater percentage of revenue from past due citations collected. Greater efficiency in the follow up process should reduce “scofflaws” and result in better compliance with City requirements.

The proposed contract with Data Ticket, Inc., is for the amount of \$130,000 annually with a “not to exceed” amount of \$150,000 per year for services associated with Processing and Collection of Parking and ARO citations. The contract does not include a provision for a CPI or annual increase. This cost includes participation in the Franchise Tax Board’s (FTB) Interagency Intercept program.

FISCAL IMPACT: The parking and ARO citation program generates adequate fine revenue to support program costs. Because the program is cost-covering, there is no added General Fund burden associated with the contract.

ENVIRONMENTAL REVIEW: None

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or designee to execute an agreement with Data Ticket, Inc., for the processing and collections of parking and administrative citations for a term of five years.

***2.9 APPROVAL OF PLANS AND SPECIFICATIONS AND AWARD OF CONTRACT FOR THE POLICE BUILDING AND MAIN LIBRARY BOILER REPLACEMENTS**

Approval of Plans and Specifications, and Award of Contract to the Lowest Responsive Responsible Bidder for the Police Building and Main Library Boiler Replacements (City Project No. PWC 8684)

Contact Person:

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Robert Kalkbrenner

Civic Facilities Development Manager

Public Works

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Executive Summary: The purpose of this report is to recommend the City Council approve the plans and specifications, and award a construction contract, in the amount of \$190,750, to Bay City Boiler & Engineering, Inc., the lowest responsive and responsible bidder for the boiler replacements at the following two public buildings under City Project No. 8684:

1. Police Building, 2000 Stevenson Boulevard
2. Main Library, 2400 Stevenson Boulevard

BACKGROUND: The boilers at the Police Building and Fremont Main Library are in need of replacement in order to comply with Bay Area Air Quality Management District's requirements. In June 2009, the City Council approved application of \$220,000 in Energy Efficiency and Conservation Block Grants (EECBG) to the City of Fremont's Energy Efficiency Projects. This agenda item is part of the City's commitment to energy efficiency by replacing the Police Building and the Main Library boilers.

PROJECT DESCRIPTION: This project includes the replacement of two boilers and other auxiliary work described in the documents for two existing City of Fremont public buildings.

CONTRACT DURATION: The Contract Documents stipulate that the work is to be performed and substantially completed in 75 calendar days.

DISCUSSION/ANALYSIS: The construction bid documents were advertised in the Tri-City Voice on June 14, 2011, and June 21, 2011. The bid documents were also distributed to five builders' exchanges and plan rooms. The engineer's estimate is \$174,000. Five bids were received and opened on July 7, 2011. The bidders with their respective bid amounts are shown below.

<i>Contractor</i>	<i>Base Bid Total</i>	<i>Rank</i>
Bay City Boiler & Engineering Co., Inc.	\$190,750	1
Heathorn & Associates Contractors, Inc. (dba: American Air Conditioning, Plumbing and Heating Co.)	\$228,310	2
Champion Industrial Contractors, Inc.	\$240,000	3
Environmental Systems Inc., of Northern California	\$244,000	4
Milestone Contractors, Inc. (dba: N.V. Heathorn Co.)	\$289,024	5

The low bidder, Bay City Boiler & Engineering Co., Inc., submitted a responsive base bid in the amount of \$190,750, and all required documentation is in order. The firm is experienced in this type of work.

FISCAL IMPACT: The original budget of \$ 220,000 for City Project No. PWC8684 was approved and appropriated by City Council on June 9, 2009.

Appropriations:

Funds appropriated to date to PWC8684 for this project	\$220,000
Funds spent to date	<u>(\$9,256)</u>
Total Available Project Budget	\$210,744

The project involves the replacement of two boilers and associated piping. Therefore, staff anticipates the level of staff time required to inspect and accept the work is relatively minor, and the project should be completed within the current budget. Should additional funding be required, staff will return to Council to request the appropriation of additional available EECBG funds.

ENVIRONMENTAL REVIEW: This project is categorically exempt from California Environmental Quality Act (CEQA) per Section 15301, existing facilities. The Department of Energy has determined that the project may be categorically excluded from NEPA review.

DESIGN CONSULTANT: Roy Associates (Mechanical, Electrical, & Plumbing)

ENCLOSURE: None

RECOMMENDATION:

1. Approve the plans and specifications for the Police Building and Main Library Boiler Replacements, City Project No. 8684 (PWC).
2. Award a contract for the Police Building and Main Library Boiler Replacements, City Project No. 8684 (PWC), to Bay City Boiler & Engineering Co., Inc., in the amount of \$190,750; and authorize the City Manager, or designee, to execute the contract.

***2.10 ENGINEER SELECTION AND CONTRACT AWARD FOR DESIGNING
DEVELOPMENT CENTER SEISMIC UPGRADE PROJECT**

**Authorization of City Manager to Execute a Contract with Biggs Cardoso Associates, Inc.,
in an Amount of \$124,126 for Comprehensive Design Engineering Services for
Development Center Seismic Upgrade, HVAC Replacement, and Exterior Wall Repair
(City Project No.
PWC 8752)**

Contact Person:

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Civic Facilities Development Manager
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Executive Summary: Staff completed a selection process for design and engineering services for the Development Center seismic upgrade, HVAC replacement, and exterior wall repair project, PWC8752. Staff recommends that the City Council authorize the City Manager to execute a comprehensive design engineering services contract with Biggs Cardoso Associates, Inc., in an amount of \$124,126.

BACKGROUND: The Development Center building is a two-story, concrete tilt-up office building located at 39550 Liberty Street. The lateral structural system is concrete tilt-up shear walls with braced frames. The 62,750 square foot building has a rectangular footprint and an interior courtyard.

The seismic retrofit of the Development Services Center is intended to strengthen the building for better structural performance. The building, built in 1983, used a construction method that is now known to be susceptible to weak roof-to-wall connections during an earthquake. The building houses critical City of Fremont disaster-recovery staff (Public Works, Building Inspection/Permits, and Code Enforcement). Consequently, it is desirable to improve the building performance so that staff can safely exit the building immediately after a major earthquake and be available to provide post-disaster recovery services, and have less building damage to be repaired after the event.

The initial design analysis work of the Development Center done in 2004 by Creegan and D'Angelo Engineers intended to bring the facility to an "Essential Services" facility performance standard. An "Essential Services" level of performance would have allowed the facility to operate with minimal building damage or repair during and after a major earthquake. At the time of that study, the City did not have an Emergency Operations Center (EOC) that met the Essential Services level and the Development Center also housed the City's computerized information systems (IT Services). The initial cost estimate for the retrofit project was in excess of \$9 million dollars for construction, excluding soft costs.

In 2007/08, a qualitative evaluation of the Development Services Center building seismic system developed options to upgrade and strengthen the building. Alternate locations for the City's Emergency Operations Center (EOC) and IT Services were also separately studied.

After the City completed construction of its new Maintenance Center Administration building which was built to meet the Essential Services standards, it was designated as the City's EOC. Communication systems and related infrastructure were upgraded at the Maintenance Center in 2008 to allow it to better function as the EOC.

In 2010, the City's IT Services began moving its operation and main server room from the 2nd floor of the Development Services Center to City Hall, Building B. The relocation of IT Services was funded with 2009/10 CIP funds. That move is now nearly complete.

As a result of the Development Services Center building qualitative evaluation, a list of recommendations to improve the building's seismic system was developed. In 2008, the City began implementing the recommendations as part of a phased approach to retrofitting the building. The following table summarizes the recommendations, work completed-to-date, and work to be considered:

<i>Recommendations</i>	<i>Work Completed-to-Date</i>	<i>Work to be Considered</i>
Upgrade the north and south wall out-of-plane wall anchors.	Completed in 2008	
Install glass protection to exit stair and courtyard glazing.	Completed in 2008	
Install cross diaphragm roof ties.		Part of this Scope
Upgrade the east and west wall out-of-plane wall anchors.		Part of this Scope
Upgrade the wood roof plywood sheathing/nailing, sub-diaphragms, and cross-chord ties.		Part of this Scope
Upgrade 2 nd floor diaphragm connections to collectors and walls.		Not part of this Scope. Only needed for essential services standard.
Upgrade courtyard frames and footings.		Not part of this Scope. Only needed for essential services standard.

The scope of this design contract is to provide the following work:

1. **Seismic Upgrade:** Develop and refine the additional work for seismic rehabilitation that can fit the City's project budget and needs. The areas to be considered are the following:
 - Relative deficiency of various building components: expressed in terms of demand/ capacity ratios (D/C) ratios.
 - Importance of various components to the seismic performance: some components are more critical than others.
 - Cost associated with construction with respect to budget available for structural portion of this project.
 - Impact of construction to building occupants and operations.

2. **HVAC Replacement:** Design and engineer replacement of two existing 30-year old 40-ton HVAC units located on the building roof.
3. **Exterior Wall Repair:** Prepare plans and specifications for repair of the exterior wall brick veneer, grouts, and sealants.

DISCUSSION/ANALYSIS: To initiate the design engineering process for the project, the City issued a Request for Proposals (RFP) for design engineering services. The RFP was widely disseminated and eight firms responded. A selection panel comprised of Public Works staff and an outside structural engineer interviewed four firms.

Following the interviews, the selection panel recommended Biggs Cardosa Associates, Inc., (BCA). BCA's design team includes the following: Architect, Fentress Architects; and Mechanical Engineer, Advance Design Consultants, Inc.

The following table summarizes the selection criteria and the recommended design team's qualifications:

<i>Selection criteria:</i>	<i>Qualifications of Biggs Cardosa Associates Team:</i>
Licenses.	<ul style="list-style-type: none"> ▪ Licensed architects and engineers are on the project team.
Seismic retrofit/upgrade experience/qualifications.	<ul style="list-style-type: none"> ▪ Over 25 years of experience in structural design for new and retrofit for tilt-up concrete buildings for government and private sectors. ▪ Wide range experience on civic, corporate, school, industrial, and laboratory facilities. ▪ Strong experience working with public agencies ▪ Sub-consultants have strong experience with civic facilities projects.
Ability to work effectively with City's project team.	<ul style="list-style-type: none"> ▪ Outstanding references from jurisdictions that have recent experience working with this firm, including San Jose Redevelopment, City of Capitola, City of Brisbane, and City of Santa Clara.
Ability to meet project schedule and budget.	<ul style="list-style-type: none"> ▪ Extensive experience in design of structural retrofit for tilt-up concrete building. ▪ Qualified and experienced sub-consultants for this type of project. ▪ Project approach organized around meeting budget and being responsive to client. ▪ Commitment for adherence to project schedule and budget.
Acceptance of City's standard terms and conditions.	<ul style="list-style-type: none"> ▪ Standard terms and conditions accepted.

Based on Biggs Cardosa Associates' qualifications, staff initiated negotiations with the firm. The scope of work comprehensively covers the design and development of the project through the end of construction. The total not-to-exceed fee is \$124,126, including reimbursable expense.

Next steps: Pending City Council contract approval authorization for Biggs Cardosa Associates, staff will execute the contract and issue a notice to proceed to begin design work. The design work and permit approval is planned to be completed this winter, followed by bidding, with construction starting in Spring 2012 and completed in Fall 2012.

FISCAL IMPACT: The project budget totals \$1,900,000. This budget includes estimated soft costs, construction costs, and contingencies.

Appropriations:

Certificate of Participation (COP) Funds Appropriated to date to PWC8752 for this project	\$1,900,000
Recommended Additional Appropriations	\$ <u>0</u>
Total Project Budget	\$1,900,000

ENVIRONMENTAL REVIEW: None. Appropriate environmental review will occur in conjunction with the development and approval of the design for the Development Center Seismic Upgrade Project.

ENCLOSURE: None

RECOMMENDATION: Authorize City Manager to execute a contract with Biggs Cardosa Associates for design engineering services in an amount not to exceed \$124,126.

***2.11 SETTING THE GENERAL OBLIGATION BOND 2011/12 TAX RATE**

Setting the Annual Tax Rate for Voter-Approved General Obligation Bond Debt Service for Fiscal Year 2011/12

Contact Person:

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Executive Summary: In November 2002, Fremont voters approved Measure R, thereby authorizing the City to issue \$51 million in General Obligation (GO) Bonds. The City is obligated to annually levy ad valorem taxes upon all taxable properties within the City for the payment of the principal and interest for these bonds. This report recommends that the City Council adopt a resolution to (a) establish the fiscal year 2011/12 tax rate at \$0.00983 per \$100 of assessed valuation (0.00983%), and (b) request and authorize the County of Alameda to levy the tax at this rate on all taxable property within the City of Fremont.

BACKGROUND: In 2002, Fremont voters passed Measure R with an affirmative vote of 74.4% of the votes cast (only two-thirds were needed) to approve an override tax to pay debt service on \$51 million in Fire Safety Project GO Bonds. The California Constitution permits the voters to approve such taxes that override the general “1% of full cash value” limit on ad valorem property taxes to pay debt service on indebtedness used to acquire or improve real property. Measure R specified that the Fire Safety Project GO Bond proceeds be used to replace three older fire stations with new modern stations, to construct public safety training facilities, and to remodel and to upgrade seven existing fire stations to meet current earthquake standards.

Three bond series totaling \$51,000,000 have been issued: Series A for \$10,000,000 on July 17, 2003, Series B for \$25,000,000 on April 14, 2005, and Series C for \$16,000,000 on February 11, 2009. The Series A and Series B proceeds are now completely spent. Approximately \$1.7 million of the Series C proceeds remained at June 30, 2011, for project costs.

DISCUSSION/ANALYSIS: The override tax levy applies to both secured and unsecured property and, by definition, supplements the regular 1% property tax that pays for general city services. Each year, the Council sets the override tax rate to generate the taxes needed for eighteen months of bond debt service. The fiscal year 2011/12 override tax rate is calculated below by first computing the net secured debt service requirement [\$2,955,248], and then dividing this amount by the net secured assessed value [\$30,051,889,537]. The gross assessed value (adjusted for all exemptions except the homeowners property tax relief exemption) of all taxable secured properties within Fremont [\$31,141,854,443] is reduced by a 3.5% delinquency factor to arrive at the net secured property assessed value divisor of \$30,051,889,537. The more significant computational steps are as follows:

Bond debt service requirements for eighteen months	\$5,535,666
Less: Available cash on hand at June 30, 2011	(2,358,999)
Less: Unsecured property override tax levy	(221,419)
Subtotal: Net secured debt service requirement	2,955,248
Divide by: Net secured property assessed values	<u>\$30,051,889,537</u>
Equals: Override tax rate for fiscal year 2011/12	<u>0.00983%</u>

Before dividing to compute the fiscal year 2011/12 tax rate, the net debt service requirement is derived by subtracting both the available cash on hand at June 30, 2011 [\$2,358,999], and the unsecured tax levy net of anticipated unsecured tax delinquencies [\$221,419] from the eighteen-month debt service requirement [\$5,535,666]. By using an eighteen month debt service horizon, bondholders are assured of prompt debt service payments despite the difference in the dates on which property tax revenues are received versus the dates on which debt service payments are due. However, the eighteen month horizon is short enough that the City does not exceed the limit of thirteen months of debt service cash on hand that is imposed by U.S. Treasury Regulations for tax-exempt debt. Available cash at June 30, 2011, was \$2,358,999, which was \$6,129 more than the \$2,352,870 available at June 30, 2010.

The net unsecured property assessed value of \$2,330,731,005 was computed by reducing the gross unsecured property assessed value (net of exemptions) of \$2,415,265,290 (this value is supplied by the Alameda County Assessor) by a 3.5% delinquency factor. California Revenue and Taxation Code Section 2905 permits the current year's secured tax rate to be used as next year's unsecured tax rate because of the different levy dates used for secured and unsecured property taxes. Therefore, the fiscal year 2010/11 secured tax rate of \$0.0095 per \$100 of assessed value (0.0095%) becomes the fiscal year 2011/12 unsecured tax rate, and is multiplied by the net unsecured property assessed value to compute the net unsecured tax revenues [\$221,419].

Gross property assessed values for both secured and unsecured properties are reduced by the 3.5% delinquency factor to assure bondholders of their full debt service payments regardless of taxpayer payment performance. With the economy seeming to stabilize, the 3.5% delinquency rate that was used in prior years before the severe economic downdraft is incorporated into this year's formula. Should this assumption prove to be too optimistic, the calculation provides for sufficient "cushion" so that payments to bondholders will not be in jeopardy. Updated property tax delinquency rate information has not yet been provided by the County.

FISCAL IMPACT: The secured override tax rate for fiscal year 2011/12 of 0.00983% increased slightly over fiscal year 2010/11's rate of 0.0095% because of the slight increase in the debt service requirement, partially offset by a slight decrease in the net property assessed values used to generate the property taxes needed for the debt service payments.

By adopting the proposed resolution, the City Council authorizes the County of Alameda to levy and collect the required debt service amount of \$2,955,248 by assessing all taxable property within the City of Fremont with an override tax in addition to the regular 1% ad valorem tax and any other voter-approved override taxes. The taxes for the Fire Safety Project GO Bonds will be billed on the regular property tax bills sent to property owners.

ENCLOSURE: [Draft resolution](#)

RECOMMENDATION:

1. Establish the Fire Safety General Obligation Bonds tax rate of \$0.00983 per \$100 of assessed valuation (0.00983%) for fiscal year 2011/12.
2. Adopt a resolution requesting and authorizing the County of Alameda to levy a tax on all taxable properties in the City as a voter-approved levy with respect to the Fire Safety Project GO Bonds.

***2.12 ADOPTION OF CFD NO. 1 POLICY AND ADMINISTRATIVE PROCEDURE**

Adoption of a Resolution of the City Council of the City of Fremont Adopting the City's Policy and Administrative Procedure for Appeals and Interpretations Pursuant to Section F of the Second Revised Rate and Method of Apportionment of Special Tax for City of Fremont Community Facilities District No. 1 (Pacific Commons) and Appointing an Appeals Board

Contact Person:

Name:	Nellie Ancel	Harvey Levine
Title:	Senior Deputy Attorney II	City Attorney
Dept.:	City Attorney	City Attorney
Phone:	510-284-4030	510-284-4030
E-Mail:	nancel@fremont.gov	hlevine@fremont.gov

Executive Summary: Community Facilities District No. 1 (CFD) includes the Pacific Commons planned development area and provides certain services and facilities within the district boundaries. Properties within the CFD are subject to a Facilities Special Tax and a Services Special Tax. Recently, Cisco Technology, Inc., a property owner within the CFD, submitted to the City an appeal of its Special Tax and a request for an interpretation of the special tax provisions. Cisco's appeal was submitted in accordance with the appeal provisions of the Second Revised Rate and Method of Apportionment of Special Tax (RMA) which is part of the CFD documentation. Although the RMA sets forth a procedure for taxpayers to submit an appeal of the Special Tax on their property, it does not include a specific process for submittal of information from the party appealing the special tax or from other interested or affected parties. Also, the appeal provisions in the RMA allow the City Council to designate an appeals board to hear appeals of determinations by the City Manager with which the appellant disagrees. Staff recommends that the City Council adopt a resolution establishing a policy and administrative procedure for appeals and interpretations pursuant to Section F of the RMA and appointing an appeals board to hear appeals of City Manager decisions of special tax appeals and requests for interpretation. Staff recommends that the appeals board be composed of the Public Works Director, the Finance Director, and a representative of the City Attorney's Office.

BACKGROUND: Taxable properties within the CFD are subject to a Facilities Special Tax and a Services Special Tax that are determined and levied each year in accordance with the Second Revised Rate and Method of Apportionment of Special Tax, which was approved by the City Council pursuant to City Council Resolution No. 9926, adopted on June 10, 2003, and by a vote of the qualified electors in the CFD. The RMA, Section F (a copy of which is attached) sets forth a general process for taxpayers to appeal the special tax on their property or to request interpretations to clarify vagueness or ambiguities in the RMA. Under Section F, the City Manager or designee is to make the initial determination on a special tax appeal. If the taxpayer disagrees with the City Manager's decision, the decision can be appealed to the City Council or an appeals board designated by the City Council.

Cisco Technology, Inc., recently submitted a special tax appeal and a request for interpretation of the RMA to the City Manager. As a result, staff reviewed the procedures set forth in Section F of the RMA. Section F does not include a specific process for submittal of information by the taxpayer or from interested or potentially affected parties. A decision on appeal of a special tax where a reduction in tax

is requested could result in an increase of the special tax on other properties in the CFD. Therefore, to ensure that City decision-makers have full access to information to evaluate the appeal, staff is recommending Council adopt a policy and procedure to allow notice and opportunity for the taxpayer and other potentially affected taxpayers to provide written information for the City decision-makers to consider.

The issues involved in appeal of the special tax and in requests for interpretation of the RMA are precise and technical. Therefore, staff is recommending that the Council appoint an appeals board to hear appeals of the City Manager's decisions on special tax appeals and on requests for interpretation where the decision could result in a reduction or increase of special tax on any property within the CFD. The appeals board would be composed of the Public Works Director, the Finance Director, and a representative of the City Attorney's Office.

DISCUSSION/ANALYSIS: Adoption of the policy and procedure to implement the special tax appeals and interpretations provisions of Section F of the RMA will establish clear procedures to govern special tax appeals and requests for interpretations. These procedures will ensure that all interested parties have a clear understanding of the process and that the appeals and interpretations are processed in a consistent manner by the City.

FISCAL IMPACT: Costs of processing an appeal or a request for interpretation of the RMA are eligible administrative expenses of the CFD. The policy and procedure provides that the costs shall be included in the applicable fiscal year's Facilities Special Tax Requirement or Services Special Tax Requirement, as appropriate. Therefore, no fiscal impact is expected.

ENVIRONMENTAL REVIEW: This action is not a project subject to review under the California Environmental Quality Act because it is an administrative governmental activity that will not result in direct or indirect physical changes in the environment [CEQA Guidelines Sections 15061(b)(3) and 15378(b)(5)].

ENCLOSURES:

- [Draft resolution](#)
- [Copy of Section F of the RMA](#)

RECOMMENDATION: Adopt a Resolution adopting the City's policy and administrative procedure for appeals and interpretations pursuant to Section F of the second revised Rate and Method of Apportionment of special tax for City of Fremont Community Facilities District No. 1 (Pacific Commons) and appointing an appeals board.

***2.13 ACCEPTANCE OF FY 2011/12 FEDERAL HOME FUNDING**

Adopt a Resolution Accepting FY 2011/12 Federal Home Investment Partnership Act Funds and Authorizing the City Manager to Execute an Agreement with Alameda County

Contact Person:

Name:	May Lee	Elisa Tierney
Title:	Housing Program Manager	Redevelopment Agency Director
Dept.:	Office of Housing & Redevelopment	Office of Housing & Redevelopment
Phone:	510-494-4506	510-494-4501
E-Mail:	mlee@fremont.gov	etierney@fremont.gov

Executive Summary: The purpose of this report is to request the City Council's approval to accept \$521,809 in FY 2011/12 in Federal HOME Investment Partnership Act Funds to continue the City's HOME program. Staff also recommends that the City Council authorize the City Manager to execute the sub-recipient agreement with Alameda County.

BACKGROUND: Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 created the HOME program to provide flexible funding to state and local governments for lower income affordable housing programs. In general, HOME funds can be used to acquire, rehabilitate, finance, and construct affordable housing, as well as provide tenant-based rental assistance. The Alameda County Home Investment Partnership (HOME) Program was created in 1990 to provide equitable distribution of funding for local cities for affordable housing programs. Under federal law, Fremont cannot receive a separate entitlement grant because it does not meet the minimum threshold percentage of population at the poverty level. Since 1991, the City of Fremont has participated in the Alameda County HOME Program Consortium for the purposes of securing federal HOME funding. Members of the Consortium include the cities of Fremont, Union City, Hayward, San Leandro, Alameda, Livermore, Pleasanton, and Alameda County representing the unincorporated portions of the county and the cities of Albany, Dublin, Emeryville, Newark, and Piedmont.

DISCUSSION/ANALYSIS: Over the years, the City has helped numerous low to extremely low income households through the HOME program. To continue the HOME program in FY 2011/12, the City must enter into a sub-recipient agreement with Alameda County. Table 1 below provides examples of prior uses of HOME funds in the City of Fremont:

<i>Project Allocation Year</i>	<i>Projects and Programs</i>	<i>HOME Funds</i>	<i>Number of Units</i>	<i>Population Served</i>
1992	Century Village Apartments	\$731,957	75 units	Very low and low income families
1993	Pacific Grove Apartments	\$323,895	20 units	Extremely low income persons with mental disabilities
1994	Park Vista Apartments	\$300,000	60 units	Very low and low income families
1995	BridgeWay Apartments	\$480,000	8 units	Very low income homeless families

<i>Project Allocation Year</i>	<i>Projects and Programs</i>	<i>HOME Funds</i>	<i>Number of Units</i>	<i>Population Served</i>
1998	Adams Avenue	\$100,000	3 homes	Very low income families
2001	Housing Scholarship Program	\$350,953	10 rental subsidies	Extremely low income families enrolled in vocational training
2002	Project Independence I &	\$150,871	20 rental subsidies	Extremely low income adults emancipated or aged out of the foster care system and enrolled in vocational training
2006	Project Independence II	\$207,409	15 rental subsidies	
2003	Lorenzo Creek Apartments	\$250,000	28 units	Very low and low income homeless families
2003	Lincoln Oaks Apartments	\$693,650	11 units	Extremely low income developmentally disabled adults
2004	Irvington Terrace Apartment	\$600,000	100 units	Extremely low and low income families
2005	Baywood Apartments	\$400,000	60 units	Very low and low income families
2007	Eden Peralta Senior Housing	\$1,400,000	98 units	Senior housing
2008	Project Independence II	\$207,409	15 rental subsidies	Very low income young adults emancipated, or aged out of foster care
2009	Main Street Village	\$1,059,991	63 units	Extremely low and low income families

FISCAL IMPACT: There is no match requirement for this funding. The appropriation of the funds was included in the adopted FY 2011/12 City budget.

ENVIRONMENTAL REVIEW: HOME funded projects are subject to environmental review procedures pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, and implementing regulations set forth in 24 CFR Part 58.

ENCLOSURE: [Draft resolution](#)

RECOMMENDATION: Adopt a resolution authorizing the City Manager or his designee to execute a FY 2011/12 HOME sub-recipient agreement with Alameda County, and accept \$521,809 in FY 2011/12 Federal HOME Investment Partnership Act Funds.

***2.14 PROPOSAL FOR RESTATED FLEXIBLE BENEFITS PLAN**

Information regarding the Proposal to Restate the 125 Flexible Benefits Plan

Contact Person:

Name: Brian Stott
Title: Director
Dept.: Human Resources
Phone: 510-494-4664
E-Mail: bstott@fremont.gov

Executive Summary: After reviewing the City's IRC Section 125 Cafeteria Plan document, originally adopted on December 1, 1988, staff proposes a restatement of the plan to include updated plan provisions and clarifications of plan features. The City Attorney's Office recommends the restatement of the plan because major plan changes have occurred since original adoption. However, to date, no plan restatement has occurred. Since 1988, plan changes not reflected in the current plan document include the strict HIPPA requirements, and changes to the medical, dental and vision plans that are made available to employees.

DISCUSSION/ANALYSIS: On December 1, 1988, the City of Fremont adopted an IRS valid, Section 125 Cafeteria Plan. The plan was designed to provide City employees with a choice between cash and benefits, including medical, dental, dependent care assistance, and medical reimbursement plans. Since then, several plan changes have occurred. Staff would also like to clarify the relationship between the Health Benefit Allowance and the Cost of Benefit plans by including language in the plan document that reads, "the Participant may be eligible to receive the cash-out value of the balance of unused Health Benefit Allowance, but only to the extent determined by the City or an applicable collective bargaining agreement for the Plan Year." Staff proposes adding the "may" language in case the ABC cash provision is eliminated.

The City's Section 125 Plan is an administrative function and routinely requires updating based on changes to the health benefit plan providers, IRS changes and other changes to the law. For this reason staff is also recommending that the City Council delegate to the Human Resources Director the authority to amend the plan in the future (section 12.1). The Human Resources Director's authority would remain in place until it is revoked in writing or upon termination of employment.

FISCAL IMPACT: Restating the IRC Section 125 Cafeteria Plan will not have a fiscal impact. The restated plan document will provide direction to employees with questions on how the Dependent Care and Medical Reimbursement plans work.

ENVIRONMENTAL REVIEW: Not applicable

ENCLOSURE: [Draft Flexible Benefit Plan Document, Amended and Restated, Effective August 1, 2011](#)

RECOMMENDATION: Approve the restated IRC Section 125 Cafeteria Plan document.

***2.15 AIR PRODUCTS FRANCHISE EXTENSION AGREEMENT**

Adopt a Resolution of Intent to Hold a Public Hearing to Consider Granting a One-Year Franchise Extension Agreement to Air Products and Chemicals, Inc., and Direct the City Clerk to Publish the Notice Included in the Resolution of Intent

Contact Person:

Name:	Randy Sabado	Norm Hughes
Title:	Real Property Manager	City Engineer
Dept.:	Public Works	Public Works
Phone:	510-494-4715	510-494-4748
E-Mail:	rsabado@fremont.gov	nhughes@fremont.gov

Executive Summary: The purpose of this report is to request that the City Council adopt a resolution of intent to grant a one year extension to Air Products and Chemicals, Incorporated, a Delaware Corporation, for an existing franchise agreement that is set to expire on September 3, 2011. The purpose of the franchise is to permit Air Products to install, construct, maintain and use under, along, across or upon the public streets and rights-of-way within the City, all pipes and appurtenances for transmitting and distributing nitrogen gas. A resolution of intent is a precursor to a public hearing on the franchise extension itself, and is required by State law. The one-year extension will allow staff the time to negotiate a long-term franchise agreement with the grantee.

BACKGROUND: On June 3, 1986, the City Council adopted Ordinance No. 1725, which established the terms and conditions for the granting of franchises for the non-exclusive use of City rights-of-way for the purpose of transmitting and/or distributing nitrogen gas.

On August 5, 1986, the City Council adopted Ordinance No. 1732, by which the City granted a fifteen-year franchise to Air Products and Chemicals, Inc., a Delaware Corporation, and on February 25, 2003, the City Council adopted Ordinance No. 2497, granting a ten-year extension to the terms of the franchise, which is set to expire on September 3, 2011.

DISCUSSION/ANALYSIS: The Air Products pipeline runs for a distance of approximately five miles, located primarily in the southern part of Fremont within various City streets, such as Page Avenue, Milmont Drive and Kato Road, providing nitrogen gas to Soletron, Seagate and LAM Research. Nitrogen gas is a non-combustible gas used in the semiconductor industry and makes up 78% of the earth's atmosphere.

Air Products paid the City an annual fee of approximately \$37,000 in 2010, which is based upon the rates specified in Ordinance No. 1725, namely, \$650 for each mile of pipeline installed with the public streets, and \$125 per inside diameter inch of each customer service lateral. The rates have since been increased at the rate of 7% per year.

The franchise is due to expire on September 3, 2011. Staff has had initial discussions with Air Products and is requesting a one-year extension to the agreement to allow time to negotiate a new long-term franchise. California Public Utilities Code Section 6232 calls for the adoption of a resolution of intent to grant a franchise, which includes an extension thereof. After adoption of the resolution of intent, a

public hearing notice must be published within 15 days, and a public hearing must be held between 20 and 60 days after the passage of the resolution. Staff has tentatively scheduled the public hearing to consider an extension to the Franchise Agreement for September 6, 2011.

FISCAL IMPACT: The extension of this franchise agreement will generate approximately \$37,000 annually to the General Fund.

ENVIRONMENTAL REVIEW: The pipeline is an existing facility and therefore an extension of the franchise agreement would be considered a Class I categorical exemption.

ENCLOSURE: [Draft resolution](#)

RECOMMENDATIONS:

1. Adopt a resolution of intent to grant a one-year extension to the Franchise Agreement with Air Products and Chemicals, Incorporated, a Delaware Corporation.
2. Direct the City Clerk to publish the notice included in the resolution of intent within 15 days in a newspaper of general circulation within the City.

***2.16 IAFF/BATTALION CHIEFS MOU**

Consideration of a Resolution Approving a new Memorandum of Understanding (2011-2013) with the International Association of Fire Fighters and Battalion Chiefs (IAFF)

Contact Person:

Name:	Brian Stott	Mark Danaj
Title:	Director	Assistant City Manager
Dept.:	Human Resources	City Manager's Office
Phone:	510-494-4660	510-284-4000
E-Mail:	bstott@fremont.gov	mdanaj@fremont.gov

Executive Summary: In July 2011, the City of Fremont completed negotiations with the International Association of Fire Fighters and Battalion Chiefs (IAFF) for a two-year labor agreement. These bargaining units have 124 members and represent sworn fire fighters, fire engineers, fire captains and battalion chiefs. The proposed MOU contains the following significant changes from the prior agreement term: total compensation reductions, a second tier retirement benefit for new employees, a reduction in health benefit allowance alternative benefits and compensation plan, and reduced cap on retiree medical benefits for new employees. Otherwise, the provisions of the former MOU are generally carried forward.

BACKGROUND: On March 1, 2011, the City Council adopted labor relations guidelines to support City staff's efforts to address the City's ongoing General Fund structural imbalance caused by rising personnel costs and recession-related decreased revenue. The guidelines directed staff to address both short-term imbalances and the long-term fiscal sustainability of the City, as follows:

1. Focus on the cost of total compensation while considering the City's fiscal condition and revenue projections
2. Use short-term and long-term strategies to curtail escalating benefit costs, such as wellness programs and other cost containment initiatives
3. Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction set by the City Council
4. Remain mindful of other increasing costs, including the retiree healthcare liability
5. To the extent possible, preserve the City's ability to be a competitive employer in the local labor market

The City and IAFF bargaining teams held eight negotiations meetings and reached tentative agreement on July 12, 2011. IAFF is scheduled to ratify the tentative agreement on July 23/24, 2011, and the results will be available on Monday, July 25.

DISCUSSION/ANALYSIS:**Primary Memorandum of Understanding Provision Changes:**

1. *Compensation Reduction:* Effective July 17, 2011, employees will contribute 5.8% of salaries to offset a portion of the 36.538% employer's CalPERS required contribution, pursuant to California Government Code 20516. Staff will begin the amendment process with CalPERS and return to Council for formal adoption of the CalPERS amendment as soon as administratively possible.
2. *Second Tier Retirement Benefit:* Effective January 1, 2012, new employee retirement benefits will consist of three percent (3%) at fifty-five years of age (55) formula based on a three (3) highest years of pay average.
3. *Health Benefit Allowance Alternative Benefits and Compensation Plan:* Effective June 30, 2013, health benefit allowance alternative benefits cash back will be capped at a maximum of five hundred eighty dollars (\$580) per month per employee.
4. *Retiree Medical Benefit:* Effective January 1, 2012, retiree medical benefits for newly hired employees will accrue at ten dollars (\$10.00) per month per year of service up to 24 years, increasing to five hundred dollars (\$500) per month with 25 or more years of service.

FISCAL IMPACT:**Fiscal Impact of the Memorandum of Understanding Changes:**

<i>MOU Change</i>	<i>Anticipated Fiscal Impact</i>
Compensation Reduction	(\$910,000)
Health Benefit Allowance Reduction	(\$123,000)
Retiree Medical Benefit Reduction	Long Term Structural Savings
Second Tier Retirement	Long Term Structural Savings

The proposed MOU satisfies Council direction by reducing total compensation, pursuing long term fiscal sustainability via changes to health and retirement benefits, and improving operational efficiencies via scheduling changes that will reduce overtime expenditures. The agreement is the result of a productive partnership between management staff and the bargaining unit to help address the City's unprecedented structural budget imbalance.

ENVIRONMENTAL REVIEW: Not applicable

ENCLOSURE: [Draft resolution](#)

RECOMMENDATION: Adopt a resolution approving a two-year Memorandum of Understanding (MOU) that commences on July 1, 2011, and expires on June 30, 2013, between the City and the International Association of Fire Fighters and Battalion Chiefs (IAFF), and authorize the City Manager to execute the MOU.

***2.17 DELEGATION OF AUTHORITY TO CITY MANAGER DURING COUNCIL RECESS**
Delegation of Authority to City Manager during Council Recess, July 27, 2011 through September 5, 2011

Contact Person:

Name: Susan Gauthier
Title: Deputy City Clerk
Dept.: City Clerk
Phone: 510-284-4076
E-Mail: sgauthier@fremont.gov

Mark Danaj
Assistant City Manager
City Manager
510-284-4005
mdanaj@fremont.gov

Executive Summary: The purpose of this report is to notify City Council of administrative matters potentially requiring action during Council recess between July 27, 2011 and September 5, 2011. The City Council is being asked to delegate authority to the City Manager or designee to approve contracts and other administrative matters required to be approved during the City Council's scheduled recess. Actions taken during Council recess will be reported out to Council on September 13, 2011.

BACKGROUND: Fremont Municipal Code Sections 2-2107(q) and 2-9202(b)(2) provide procedures by which the City Council may delegate authority to the City Manager to approve contracts and other administrative matters required to be approved during the City Council's scheduled recess. A report of actions taken will be provided to the City Council after the recess. The following items have been identified as potentially requiring action during the recess:

1. Title: Approval of Plans and Specifications and Award of Contract to the lowest responsible bidder for the Centerville Ballfield Synthetic Turf Project No. 8717 (PWC) – Re-Bid
Staff Contacts: Mark Mennucci, Associate Landscape Architect, 510-494-4530
Roger Ravenstad, Senior Landscape Architect, 510-494-4723
Name of Contracting Party: To be determined after bids are opened
Budgeted Amount: \$918,000
Recommended Action: Authorize the City Manager or designee to (1) approve plans and specifications and (2) award a construction contract for the re-bid of the Centerville Ballfield Synthetic Turf Conversion Project 8717 (PWC) to the lowest responsible bidder, in a not-to-exceed amount up to \$918,000, and authorize the City Manager or designee to execute the contract.
2. Title: Engineering Design and Construction Inspection Services related to Sabercat Creek Restoration Project Management Services Contract Amendment
Staff Contact: Kathy Cote, Environmental Services Manager, 510-494-4583
Name of Contracting Party: Questa Engineering
Budgeted Amount: \$75,000
Recommended Action: Authorize the City Manager or designee to (1) approve Amendment No. 1 to existing agreement for Engineering Design

and Construction Inspection Services related to Sabercat Creek Restoration Project with Questa Engineering, for additional engineering design in an amount not-to-exceed \$75,000, which will increase the total management service contract in an amount not-to-exceed \$205,000, and (2) retain the City Manager's amendment authority pursuant to the Purchasing Code at 20% of the original contract amount for future amendments.

3. Title: Cost Sharing Agreement for the Sabercat Creek Restoration Project (Companion item to the Questa Engineering contract amendment)
Staff Contact: Kathy Cote, Environmental Services Manager, 510-494-4583
Name of Contracting Party: Alameda County Flood Control and Water Conservation District
Budgeted Amount: \$45,000
Recommended Action: Authorize the City Manager or designee to approve Amendment No. 1 to the existing agreement for cost sharing between the City and the Alameda County Flood Control and Water Conservation District (District) for the Sabercat Creek Restoration project in an amount not-to-exceed \$45,000, which will increase the total District's cash contribution to an amount not-to-exceed \$205,000, in order to fund the additional services to be provided by Questa Engineering and will decrease the District's in-kind services contribution from an amount not-to-exceed \$50,000 to an amount not-to-exceed \$20,000.
4. Title: Afghan Elderly Association Health Promoter Project Management Services Contract
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: Afghan Elderly Association
Budgeted Amount: \$98,900
Recommended Action: Authorize the City Manager or designee to execute an agreement with the Afghan Elderly Association for the Afghan Health Promoter project to provide assistance with health issues for seniors in an amount not-to-exceed \$98,900.
5. Title: Area Agency on Aging Case Management Management Services Contract
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: Alameda County Area Agency on Aging
Budgeted Amount: \$30,922
Recommended Action: Authorize the City Manager or designee to (1) execute an agreement with the Alameda County Area Agency on Aging for AFS Case Management services in an amount not-to-exceed

\$30,922; and (2) appropriate an additional \$3,081 to account 1065325.

6. Title: Area Agency on Aging MSSP Case Management Management Services Contract
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: Alameda County Area Agency on Aging
Budgeted Amount: \$53,140
Recommended Action: Authorize the City Manager or designee to execute an agreement and any other implementing documents, with the Alameda County Area Agency on Aging for the MSSP Case Management program in an amount not-to-exceed \$53,140.
7. Title: Area Agency on Aging Senior Center Management Services Contract
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: Alameda County Area Agency on Aging
Budgeted Amount: \$11,874
Recommended Action: Authorize the City Manager or designee to (1) execute an agreement with the Alameda County Area Agency on Aging for senior center activities in an amount not-to-exceed \$11,874; and (2) appropriate an additional \$1,874 to account 1735331.
8. Title: Alameda County Behavioral Health Care In-Home Mental Health Services Contract
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: Alameda County Behavioral Health Care Services
Budgeted Amount: \$422,799
Recommended Action: Authorize the City Manager or designee to execute an agreement in an amount not-to-exceed \$422,799 with Alameda County Behavioral Health Care Services to provide in-home mental health services to seniors.
9. Title: Health Promoter Project Management Services Contract
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: Alameda County Public Health Department
Budgeted Amount: \$169,250
Recommended Action: Authorize the City Manager or designee to execute an agreement with the Alameda County Public Health Department for the Health Promoter project for health care assistance for seniors in an amount not-to-exceed \$169,250.

10. Title: Agreement with California Department of Aging for MSSP Care Management Program Contract
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: California Department of Aging
Budgeted Amount: \$209,965
Recommended Action: Authorize the City Manager or designee to execute an agreement and any other implementing documents, with the California Department of Aging to provide senior case management services for a total not-to-exceed amount of \$209,965.
11. Title: City of Newark
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: City of Newark
Budgeted Amount: \$5,000
Recommended Action: Authorize the City Manager or designee to execute Task Order No. 3 to the existing Joint Powers Master Service Agreement with the City of Newark to provide senior case management services in Newark in an amount not-to-exceed \$5,000.
12. Title: City of Union City
Staff Contact: Karen Grimsich, Aging and Family Services Administrator, 510-574-2062
Name of Contracting Party: City of Union City
Budgeted Amount: \$11,400
Recommended Action: Authorize the City Manager or designee to execute an agreement with the City of Union City for case management services to provide case management services for seniors in Union City in an amount not-to-exceed \$11,400.
13. Title: FY 2011/12 Social Service Grant Contract
Staff Contact: Lucia Hughes, CDBG Administrator, 510-574-2043
Name of Contracting Party: Abode Services
Budgeted Amount: \$139,023
Recommended Action: Authorize the City Manager or designee to execute an agreement effective July 1, 2011 through June 30, 2012 with Abode Services for the operation of Sunrise Village homeless shelter in an amount not-to-exceed \$139,023.
14. Title: FY 2011/12 Social Service Grant Contract
Staff Contact: Lucia Hughes, CDBG Administrator, 510-574-2043
Name of Contracting Party: LIFE ElderCare
Budgeted Amount: \$80,924

Recommended Action: Authorize the City Manager or designee to execute an agreement for FY 2011/12, effective July 1, 2011 through June 30, 2012, with LIFE ElderCare to provide meals on wheels in an amount not-to-exceed \$80,924.

15. Title: FY 2011/12 Probation Contract
Staff Contact: Arquimides Caldera, Deputy Director, 510-574-2056 or Iris Preece, Youth and Family Services Administrator, 510-574-2128
Name of Contracting Party: Alameda County Probation Department
Budgeted Amount: \$421,661
Recommended Action: Authorize the City Manager or designee to (1) execute an agreement in an amount not-to-exceed \$421,661 for counseling and case management services to support at-risk youth and families from Fremont and Newark funded through the Comprehensive Youth Services Act, and (2) appropriate an additional \$11,337 to Fund 133.
16. Title: Mental Health Services Contract
Staff Contact: Judy Schwartz, FRC Manager, 510-574-2007
Name of Contracting Party: Alameda County Behavioral Health Care Services Agency
Budgeted Amount: \$185,551
Recommended Action: Authorize the City Manager or designee to execute an agreement with Alameda County Behavioral Health for mental health services at the Fremont Family Resource Center in an amount not-to-exceed \$185,551.
17. Title: Approval of Contract with Alameda County Health Care Services Agency
Staff Contact: Judy Schwartz, FRC Manager, 510-574-2007
Name of Contracting Party: Alameda County Health Care Services Agency
Budgeted Amount: \$150,000
Recommended Actions: Authorize City Manager or designee to execute an agreement with Alameda County Health Care Services for infrastructure support for the Fremont Family Resource Center in an amount not-to-exceed \$150,000.
18. Title: Contract Renewal with Alameda County Behavioral Health Care Services
Staff Contact: Iris Preece, Youth and Family Services Administrator, 510-574-2128
Name of Contracting Party: Alameda County Behavioral Health Care Services Agency
Budgeted Amount: \$723,426
Recommended Action: Authorize the City Manager or designee to execute an Interim Agreement between the City and Alameda County Behavioral Health Care Services for mental health services provided by Youth

and Family Services in FY 2011/12 in an amount not-to-exceed \$723,426.

19. Title: Task Order No. 6 to FUSD Joint Powers Agreement
Staff Contact: Iris Preece, Youth and Family Services Administrator, 510-574-2128
Name of Contracting Party: Fremont Unified School District
Budgeted Amount: \$104,540
Recommended Action: Authorize the City Manager or designee to execute Task Order No. 6 to the existing Joint Powers Agreement with the Fremont Unified School District for Youth and Family Services and the Fremont Family Resource Center to provide counseling services at Fremont school-sites for FY 2011/12 in an amount not-to-exceed \$104,540
20. Title: Revision to terms of an existing loan under the Community Building Rehabilitation Program
Staff Contact: Josh Huber, Redevelopment Project Manager, 510-494-4513
Name of Contracting Party: Judith Radcliff Heyman, et al
Budgeted Amount: No direct cost, although there would be foregone interest income
Recommended Action: Revise an existing loan, decreasing the interest rate to 0%, and extending the loan period for an additional 20 years.
21. Title: Police Department Seismic Retrofit Construction Project (PWC 8649) Contract Amendment
Staff Contact: Martha Martinez, Project Manager, 510-494-4727
Name of Contracting Party: Critical Solutions, Inc.
Budgeted Amount: \$85,000
Recommended Action: Authorize the City Manager or designee to approve Amendment No. 2 to the Construction Management Service Agreement with Critical Solutions, Inc., for additional services in an amount not-to-exceed \$85,000, which will increase the total construction management services in an amount not-to-exceed \$664,520.
22. Title: Police Department Seismic Retrofit Construction Project (PWC 8649) Contract Amendment
Staff Contact: Martha Martinez, Project Manager, 510-494-4727
Name of Contracting Party: The Crosby Group
Budget Amount: \$68,000
Recommended Action: Authorize the City Manager or designee to approve Amendment No. 4 to the Design and Construction Administration Service Agreement with The Crosby Group for additional services in an amount not-to-exceed \$68,000, which will increase the total design and construction administration services in an amount not-to-exceed \$1,463,863.

23. Title: Police Department Seismic Retrofit Construction Project (PWC 8649) Contract Amendment
Staff Contact: Martha Martinez, Project Manager, 510-494-4727
Name of Contracting Party: Consolidated Engineering Laboratories
Budgeted Amount: \$30,000
Recommended Action: Authorize the City Manager or designee to approve Amendment No. 1 to the Special Inspections Service Agreement with Consolidated Engineering Laboratories for additional on-call services by task order in an amount not-to-exceed \$30,000, which will increase the total special inspections services in an amount not-to-exceed \$129,671.
24. Title: Fire Bond Construction Project Management Services Contract Amendment
Staff Contact: Martha Martinez, Project Manager, 510-494-4727
Name of Contracting Party: Harris and Associates
Budgeted Amount: \$38,000
Recommended Action: Authorize the City Manager or designee to approve Amendment No. 4 to the existing agreement for Fire Bond Construction Project Management Services with Harris and Associates, for additional construction administration services in an amount not-to-exceed \$38,000, which will increase the total construction administration services in an amount not-to-exceed \$2,849,720.
25. Title: Implementation of Memorandum of Understanding(s) ratified by labor association(s)
Staff Contact: Brian Stott, Human Resources Director, 510-494-4664
Name of Contracting Party: Fremont Association of City Employees (FACE - SEIU Local 1021); Fremont Association of Management Employees (FAME); Fremont Police Management Association (FPMA); Operating Engineers, Local Union No. 3 (OE3); Professional Engineers & Technicians Association (PETA); and Teamsters, Local 856
Budgeted Amount: Consistent with Council labor relations direction
Recommended Action: Authorize the City Manager or designee to implement Memorandum of Understanding(s) ratified by labor association(s) that meet Council-established labor relations direction with the six outstanding labor associations if agreement is reached during the August City Council recess.

ENCLOSURE: [Draft resolution](#)

RECOMMENDATION: Adopt resolution authorizing the City Manager or designee to approve and execute as necessary, on behalf of the City, the items set forth in this report, and to take the following actions:

1. Authorize the City Manager or designee to (1) approve the plans and specifications for the Centerville Ballfield Synthetic Turf Conversion Project, 8717 (PWC), and (2) accept the bid and award the construction contract for the re-bid of the Centerville Ballfield Synthetic Turf Conversion Project, 8717 (PWC) to the lowest responsible bidder, in an amount not-to-exceed \$918,000.
2. Authorize the City Manager or designee to (1) approve Amendment No. 1 to existing agreement for Engineering Design and Construction Inspection Services related to Sabercat Creek Restoration Project with Questa Engineering, in an amount not-to-exceed \$75,000, which will increase the total management service contract to an amount not-to-exceed \$205,000, and (2) retain the City Manager's amendment authority pursuant to the Purchasing Code at 20% of the original contract amount for future amendments.
3. Authorize the City Manager or designee to approve Amendment No. 1, Questa Engineering contract, to the existing agreement for cost sharing between the City and the Alameda County Flood Control and Water Conservation District (District) for the Sabercat Creek Restoration project in an amount not-to-exceed \$45,000, which will increase the total District's cash contribution from an amount not-to-exceed \$205,000 to fund the additional services to be provided by Questa Engineering and will decrease the District's in-kind services contribution from an amount not-to-exceed \$50,000 to an amount not-to-exceed \$20,000. (Companion item to the Questa Engineering contract amendment).
4. Authorize the City Manager or designee to execute an agreement with the Afghan Elderly Association for the Afghan Health Promoter project in an amount not-to-exceed \$98,900.
5. Authorize the City Manager or designee to (1) execute a contract with the Alameda County Area Agency on Aging for AFS Case Management services in an amount not-to-exceed \$30,922; and (2) appropriate an additional \$3,081 to account 1065325.
6. Authorize the City Manager or designee to execute a contract and any other implementing documents, with the Alameda County Area Agency on Aging for the MSSP Case Management program in an amount not-to-exceed \$53,140.
7. Authorize the City Manager or designee to (1) execute an agreement with the Alameda County Area Agency on Aging for senior center activities in an amount not-to-exceed \$11,874; and (2) appropriate an additional \$1,874 to account 1735331.
8. Authorize the City Manager or designee to execute an agreement not-to-exceed \$422,799 with Alameda County Behavioral Health Care Services to provide in-home mental health services to seniors.
9. Authorize the City Manager or designee to execute an agreement with the Alameda County Public Health Department for the Health Promoter project in an amount not-to-exceed \$169,250.
10. Authorize the City Manager or designee to execute an agreement and any other implementing documents, with the California Department of Aging for the MSSP Case Management program in an amount not-to-exceed \$209,965.
11. Authorize the City Manager or designee to execute Task Order No. 3 to the existing Joint Powers Master service agreement with the City of Newark for the Aging and Family Services Division of the Human Services Department to provide case management services in an amount not-to-exceed \$5,000.
12. Authorize the City Manager or designee to execute an agreement with the City of Union City for case management services in an amount not-to-exceed \$11,400.

13. Authorize the City Manager or designee to execute an agreement effective July 1, 2011 through June 30, 2012 with Abode Services for the operation of Sunrise Village homeless shelter in an amount not-to-exceed \$139,023.
14. Authorize the City Manager or designee to execute an agreement for FY 2011/12, effective July 1, 2011 through June 30, 2012, with LIFE ElderCare to provide meals on wheels in an amount not-to-exceed \$80,924
15. Authorize the City Manager or designee to (1) execute an agreement with Alameda County Probation Department for counseling and case management services funded through the Comprehensive Youth Services Act in an amount not-to-exceed \$421,661, and (2) appropriate an additional \$11,337 to Fund 133.
16. Authorize the City Manager to execute an agreement with Alameda County Behavioral Health for mental health services at the Fremont Family Resource Center in an amount not-to-exceed \$185,551.
17. Authorize the City Manager to execute an agreement with Alameda County Health Care Services for infrastructure support for the Fremont Family Resource Center in an amount not-to-exceed \$150,000.
18. Authorize the City Manager or designee to execute the Interim Agreement between the City and Alameda County Behavioral Health Care Services for mental health services provided by Youth and Family Services in FY 2011/12 in an amount not-to-exceed \$723,426.
19. Authorize the City Manager or designee to execute Task Order No. 6 to the existing Joint Powers Agreement with Fremont Unified School District for Youth and Family Services and the Fremont Family Resource Center to provide school-sites services in FY 2011 in an amount not-to-exceed \$104,450.
20. Authorize the City Manager or designee to revise an existing building rehabilitation program loan with Judith Radcliff Heyman, et al, decreasing the interest rate to 0%, and extending the loan period for an additional 20 years
21. Authorize the City Manager or designee to approve Amendment No. 2 to Construction Management Service Agreement with Critical Solutions, Inc., for additional services in an amount not-to-exceed \$85,000, which will increase the total construction management services in an amount not-to-exceed \$664,520.
22. Authorize the City Manager or designee to approve Amendment No. 4 to the Design and Construction Administration Service Agreement with The Crosby Group for additional services in an amount not-to-exceed \$68,000, which will increase the total design and construction administration services in an amount not-to-exceed \$1,463,863.
23. Authorize the City Manager or designee to approve Amendment No. 1 to the Special Inspections Service Agreement with Consolidated Engineering Laboratories for additional on-call services by task order in an amount not-to-exceed \$30,000, which will increase the total special inspections services in an amount not-to-exceed \$129,671.
24. Authorize the City Manager or designee to approve Amendment No. 4 to the existing agreement for Fire Bond Construction Project Management Services with Harris and Associates, for additional construction administration services in an amount not-to-exceed \$38,000, which will increase the total construction administration services in an amount not-to-exceed \$2,849,720.
25. Authorize the City Manager or designee to implement Memorandum of Understanding(s) ratified by labor association(s) that meet Council-established labor relations direction with the six outstanding labor associations if agreement is reached during the August City Council recess.

***2.18 ADOPTION OF FINDING DENYING THE APPEAL OF THE CENTER THEATER USE PERMIT (PLN2011-00093)**

Adoption of Findings Supporting the Denial of the Appeal of the Planning Commission's Denial of the Center Theater Conditional Use Permit Amendment to Expand the Allowable Uses to Include a Concert Hall, Banquet Facility, Dinner Theater, and Other Assembly Uses and Events, Where a Performing Arts Theater and Movie Theater are Currently Permitted

Contact Person:

Name:	Joel Pullen	Barbara Meerjans
Title:	Associate Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4436	510-494-4451
E-Mail:	jpullen@fremont.gov	bmeerjans@fremont.gov

Executive Summary: The City Council heard the Appeal of the Planning Commission's denial of a use permit to expand the permitted uses of the Center Theater at its July 19, 2011, meeting. After the hearing the Council voted to deny the appeal. Based on the testimony and discussion Staff has prepared the following findings for Council consideration.

Proposed Findings: Findings Supporting the Denial of the Appeal of the Planning Commission's denial of the Center Theater Conditional Use Permit Amendment to expand the Allowable Uses to include a Concert Hall, Banquet Facility, Dinner Theater, and Other Assembly Uses and Events, where a Performing Arts Theater and Movie Theater are Currently Permitted.

Recitals: On July 19, 2011, the City Council of the City of Fremont held a hearing on the appeal of the Planning Commission's denial of the Center Theater Conditional Use Permit Amendment to expand the Allowable Uses to include a Concert Hall, Banquet Facility, Dinner Theater, and Other Assembly Uses and Events, where a Performing Arts Theater and Movie Theater are Currently Permitted.

The Council received testimony from Roger Shanks, the representative of the applicant/ appellant regarding the proposed amendment to the Use Permit, from a community member raising issues related to traffic impact of the proposed uses on Fremont Blvd., and from the Planning Staff, the Fire Chief, and Police Captain.

The Council considered the impact of the proposed uses on persons residing in the vicinity, neighborhood and the community at large.

In order to grant the appeal the City Council is required to make each of the findings required by FMC 8-22509(a-g) below:

- a. The proposed use is consistent with the general plan.
- b. The site is suitable and adequate for the proposed use.

- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services.
- d. The proposed use would not have a substantial adverse economic effect on nearby uses.
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large.
- f. If applicable, the design of the project is compatible with existing and proposed development in the district and its surroundings.
- g. If applicable, the project will comply with the provisions of article 27 of this chapter (Site Plan and Architectural Approval).

Findings: The Council is unable to make finding (b) as the site is not suitable and adequate for the proposed use because there are insufficient parking resources in the vicinity to support a waiver of 25 parking spaces for the use proposed, and the remaining combination of on-site and off-site parking is insufficient to serve the proposed project.

The Council is also unable to make finding (c) as the proposed use, design, and operation of the facility would have a substantial adverse effect on vehicular (including bicycle) and pedestrian circulation and safety because the proposal does not address potential traffic problems in the vicinity of the site on Fremont Boulevard.

The Council is also unable to make finding (d) as the proposed use would have a substantial adverse economic effect on nearby uses because, without sufficient parking available to serve the use, other nearby uses' parking would be negatively impacted, harming their ability to do business.

The Council is also unable to make finding (e) as the proposed use would be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, and the community at large because the project as proposed does not adequately provide for the safety of occupants in relation to building safety and alcohol service.

THEREFORE, being unable to make findings (b), (c), (d), and (e) of FMC 8-22509, for the reasons set forth above, the Council denies the appeal.

ENCLOSURE: None

RECOMMENDATION: Consider and adopt findings.

6.1 Report Out from Closed Session of Any Final Action

7.1 STRATEGIC SUSTAINABILITY STUDY

Consider the Strategic Sustainability Study and Adopt the Budget Principles and Strategic Sustainability Recommendations in the Strategic Sustainability Study

Contact Person:

Name:	Maya Williams	Mark Danaj
Title:	Management Analyst	Assistant City Manager
Dept.:	City Manager's Office	City Manager's Office
Phone:	510-284-4013	510-284-4000
E-Mail:	mwilliams@fremont.gov	mdanaj@fremont.gov

Executive Summary: The City of Fremont engaged Management Partners to conduct a strategic budget sustainability study and develop recommendations that will enable services to be provided within the City's projected resource capacity. For the last several years, the City has used various strategies to balance the budget. Those strategies include using financial reserves, reducing staffing, obtaining wage concessions, and reducing some specific service levels. In spite of these efforts, the City recognizes that steps will need to be taken to stabilize the budget and create fiscal sustainability over the long term.

Eliminating Fremont's structural budget deficit will require reductions in costs as well as increases in revenue. A multi-pronged approach is suggested in the Strategic Sustainability Study, to include these components: 1) service delivery model changes; 2) compensation changes; 3) expenditure controls and shifts; and 4) new or increased revenues.

Staff recommends Council consider the Strategic Sustainability Study and adopt the Budget Principles and 33 Strategic Sustainability Recommendations contained in the Strategic Sustainability Study.

BACKGROUND: A slow economic recovery from the recession and increased personnel costs have resulted in a persistent structural deficit in the City's General Fund. The City has employed several strategies to balance the budget the last several years. Strategic reductions in service levels and the cautious use of reserves have allowed Fremont to be in a better position than most Bay Area cities. This is due to prudent financial planning before the recession and actions initiated during the downturn. For the last three years, Fremont also has utilized reserves to balance the General Fund budget, a practice which is continuing for FY 2011/12, albeit at a reduced level. However, these actions have not been enough to address the structural imbalance in the General Fund. The City's need for long-term structural budget change requires the City to re-examine its cost structures, methods of service delivery, portfolio of services offered, and ability to generate revenue.

DISCUSSION/ANALYSIS: The Sustainability Study discusses in detail several Budget Principles and 33 Recommendations in the context of a multi-pronged approach.

An important strategy for avoiding structural budget deficits is to adopt budget principles that are easy to understand and can serve as a framework for maintaining financial discipline. The following Budget Principles (more detail is included in the report) reflect best practices for municipal governments currently followed by the City of Fremont, and additional ones related to capital improvements, grants and performance measures.

- Structurally Balanced Budget – The annual budgets for all City funds should be structurally balanced throughout the budget process.
- Financial Forecasting – To ensure that current budget decisions consider future financial implications, the City shall utilize a multi-year financial forecast.
- Use of One-Time Resources – One-time resources (e.g., revenue spikes, budget savings, sale of property, and similar nonrecurring revenue) shall not be used for current or new ongoing operating expenses.
- Established Reserves – All City funds shall maintain an adequate reserve level and/or ending fund balance, as determined annually and as appropriate for each fund.
- Debt Issuance – All General Fund debt issuances shall identify the method of repayment (or have a dedicated revenue source).
- Employee Compensation – Negotiations for employee compensation shall consider total compensation bargaining concepts and focus on all personnel services cost changes.
- Fees and Charges – Fee increases shall be utilized, where possible, to assure that fee program operating costs are fully covered by fee revenue.
- Capital Improvement Projects – Capital improvement projects exceeding \$100,000 in annual costs shall not proceed without City Council certification that funding be available in the year of the cost impact.
- Grants – City staff shall seek out, apply for and effectively administer federal, state and other grants that address the City's priorities and policy objectives and provide a positive benefit to the City.
- Performance Measures – All requests for departmental funding shall include performance measurement data so that funding requests can be reviewed and approved in light of service level outcomes to the community and organization.

The list of 33 recommendations can be found throughout the report and as Attachment A: List of Recommendations, in the actual report. The 33 recommendations are discussed in the context of the multi-pronged approach, to include these components: 1) service delivery model changes; 2) compensation changes; 3) expenditure controls and shifts; and 4) new or increased revenues.

FISCAL IMPACT: The consideration of the Strategic Sustainability Study and adoption of the Budget Principles and Strategic Sustainability Recommendations have no immediate fiscal impact. The implementation of any one of the recommendations or principals can trigger a fiscal impact at varying levels.

ENVIRONMENTAL REVIEW: There is no project or other action related to this staff report that triggers provisions of the California Environmental Quality Act (CEQA). Therefore, no CEQA determination is required.

ENCLOSURE: [Strategic Sustainability Study from Management Partners](#)

RECOMMENDATION: Consider the Strategic Sustainability Study and adopt the Budget Principles and 33 Strategic Sustainability Recommendations in the Strategic Sustainability Study.

8.1 Council Referrals

8.1.1 COUNCILMEMBER DUTRA REFERRAL: Move City Hall from Midtown to Warm Springs

The area around the Warm Springs BART Station, located at the intersection of two major freeways (680 & 880), represents one of the most significant economic development opportunities in the State of California. It is for this reason that the City has appropriately designated this area as a Priority Development Area (PDA) worthy of significant investment of staff time and the leveraging of regional, state and federal funds for the planning, infrastructure and environmental work necessary to optimize it's potential for success.

The City area bounded by Fremont Blvd., Mowry, Paseo Padre Parkway and Walnut has also been designated a Priority Development Area (PDA) and has historically been the City's hope for the creation of a Downtown. This effort has been most recently documented in both the Downtown Plan and the update to our General Plan.

Because of the current focus on both Priority Development Areas, it is important, appropriate and timely that the City evaluate the relative merits of locating a Civic component, inclusive of a City Hall, Cultural Arts Center, Civic Plaza and associated parking structure in both areas. The evaluation should include, but not be limited to, the ability to leverage regional, state and federal funds for the planning, infrastructure and environmental work necessary to complete the Civic Project, the economic impact to the City, likelihood and timing of the development, ability to spur retail development and financial implications for moving the city's functions from the historically planned Downtown area.

8.2 Oral Reports on Meetings and Events

8.2.1 Update on Niles Canyon Safety Improvement Project Stakeholder's Meeting

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
		August Recess		
September 6, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 20, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 27, 2011		No Council Meeting		
October 3, 2011	4-6 p.m.	Joint Council/FUSD Meeting	Council Chambers	Live
October 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 18, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 25, 2011		No Council Meeting		
November 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 15, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 22, 2011		No Council Meeting		
November 29, 2011		No Council Meeting		